



\*\*\*\*\*  
B I C E N T E N N I A L  
C E L E B R A T I O N  
1813 *to* 2013  
**LOUISIANA**  
S U P R E M E C O U R T  
\*\*\*\*\*



# LOUISIANA SUPREME COURT 1813

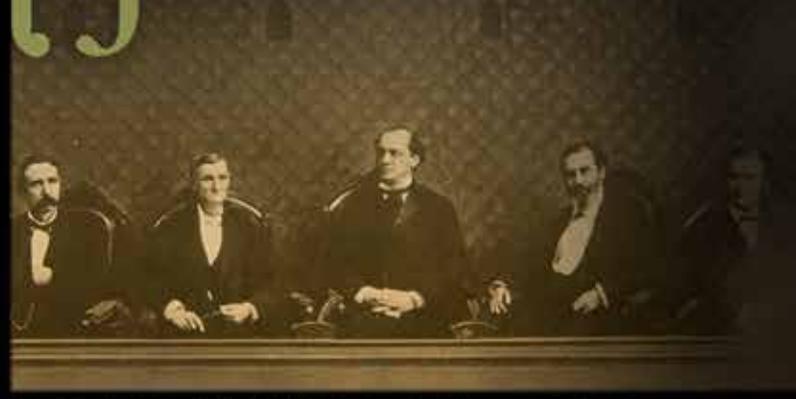


Photo Credit: Louisiana State Museum

Court House, New Orleans, La.





## THE SUPREME COURT OF LOUISIANA

The Louisiana Supreme Court first convened on March 1, 1813. On March 1, 2013, the justices of the Louisiana Supreme Court convened in a special session to commemorate and celebrate the bicentennial milestone.

The bicentennial ceremony was only one of a number of events held to commemorate the occasion. Over the year several judges, members of the bar, and the public had the opportunity to participate in the events leading up to the much anticipated celebration of the Court's longevity. In May 2012, the Louisiana Supreme Court justices returned to the Sala Capitular at the Cabildo, its home from 1853-1910, to hear oral arguments. The justices held a court session in October at Northwestern University in Natchitoches, to recognize the practice of "riding circuit," when the Court traveled to hear cases all over the state, according to a schedule set by law. The Court last convened at Northwestern in 1986.

The citizens of Louisiana owe a debt to the Louisiana Supreme Court's first judges, George Mathews, Pierre Derbigny, and Frastois Xavier Martin (Dominick Hall had a brief tenure). These men took on the difficult task of creating a system of laws from a mélange of English, Spanish, and French laws and customs. Martin, in particular, was instrumental in creating a framework for the future.

Within this booklet is not only the transcript of the entire ceremony held at the Louisiana Supreme Court on March 1, but also a short history of the Court written by Warren M. Billings. The presentations of each speaker, Richard Campanella, Raphael Cassimere, Warren Billings, and John Randall Graham, have been preserved for posterity. Additionally, the text of the play presented at the ceremony, "An Uncommon Birth: Shaping Louisiana's Legal Tradition for Statehood" is reproduced in the booklet.

The Louisiana Supreme Court's earliest judges would probably be in awe of what became of the seeds sown 200 years ago. In the words of Governor Luther E. Hall, on the occasion of the judiciary's centenary, "retrospection is in vain if it leads to no reflection and affords us no promise for the future." Let this booklet serve as both the story of the Court's past and the first step towards the promise of the future.

Justice Greg G. Guidry

*Bicentennial Timeline From 2012 Kick-Off To  
Courthouse Celebration*

**May 7, 2012**

Oral Arguments at the Cabildo in the  
Sala Capitular, New Orleans, LA

**July 2012**

The Law Library of Louisiana acquires books that  
formed part of the required legal education for  
bar admittance by the Louisiana Supreme Court.

- A Treatise on the Law of Bills of  
Exchange/Joseph Chitty (1807)
- A Treatise on the Law of  
Evidence/Samuel M. Phillipps (1839)

**July 2012**

The Law Library of Louisiana acquires a volume  
owned by William C.C. Claiborne, Louisiana's  
first governor, in office at the time the Louisiana  
Supreme Court first convened on March 1, 1813.  
The volume includes the 1813 Judiciary Act and a  
copy of the 1812 Louisiana Constitution.

**October 18, 2012**

Oral Arguments at Northwestern State  
University, Natchitoches, LA

**February 2013**

Installation of Bicentennial Exhibit in the  
Louisiana Supreme Court Museum, New  
Orleans, LA

**March 1, 2013**

Bicentennial Celebration, Louisiana Supreme  
Court, New Orleans, LA

**March 1, 2013**

Louisiana Law Library sponsors CLE entitled  
***"Bicentennial Celebration, Louisiana  
Supreme Court"***

**BICENTENNIAL PLANNING COMMITTEE**

**JUSTICE GREG G. GUIDRY,**  
Committee Chair, Supreme Court

**CHIEF JUSTICE BERNETTE J. JOHNSON,**  
Supreme Court

**CHIEF JUDGE ULYSSES G. THIBODEAUX,**  
Third Circuit Court of Appeal

**JUDGE TIFFANY CHASE,**  
Orleans Civil District Court

**PROFESSOR WARREN M. BILLINGS,**  
Louisiana Supreme Court Bicentennial  
Historian, University of New Orleans

**E. PHELPS GAY, ESQUIRE,**  
Christovich & Kearney, LLC

**PROFESSOR RAPHAEL CASSIMERE, JR.,**  
University of New Orleans

**PROFESSOR OLIVIER MORÉTEAU,**  
Louisiana State University

**PROFESSOR PAUL R. BAIER,**  
Louisiana State University

**GEORGIA CHADWICK,**  
Louisiana Law Library

**MIRIAM CHILDS,** Louisiana Law Library

**TARA LOMBARDI,** Louisiana Law Library

**ANGELA WHITE-BAZILE,**  
Supreme Court Staff

**VALERIE S. WILLARD,**  
Supreme Court Staff

**ROBERT E. GUNN,** Supreme Court Staff

**RHONDA BARNEY,** Supreme Court Staff



**March 1, 2013**

**COURT BAILIFF:**

Your Honors, Chief Justice, and Associate Justices of the Supreme Court of the State of Louisiana. O'Yez, O'Yez, O'Yez. The Honorable Supreme Court of the State of Louisiana is now in session. Order and silence is commanded under penalty of law. God save the State and this Honorable Court. Please be seated.

**CHIEF JUSTICE JOHNSON:**

Good morning.

**ALL:**

Good morning.

**CHIEF JUSTICE JOHNSON:**

Any motions from the Bar?

(Lt. Governor Jay Dardenne stands)

**LT. GOVERNOR JAY DARDENNE:**

May it please the Court. Good morning Chief Justice Johnson, I move to suspend the court

rules this morning so that we may proceed with the commemoration of the Bicentennial of the Court.

**CHIEF JUSTICE JOHNSON:**

Motion granted.

(Lt. Governor Dardenne walks to podium)

**LT. GOVERNOR DARDENNE:**

Good morning and welcome to the ceremony commemorating the 200th anniversary of the Louisiana Supreme Court.

**PRESENTATION OF THE COLORS**

**LT. GOVERNOR DARDENNE:**

Please rise for the presentation of the colors. Our colors are being presented by the 1st of the 141st Field Artillery, New Orleans's own Washington Artillery.

Would you now please join us for the Pledge of Allegiance? We will be led in the Pledge by Donna Fraiche, President of the Board of Directors

of the Supreme Court of Louisiana Historical Society.

(Donna D. Fraiche, President of the Supreme Court of Louisiana Historical Society walks to podium)

### **PLEDGE OF ALLEGIANCE RECITED**

#### **LT. GOVERNOR JAY DARDENNE:**

Thank you Donna; and now I will ask Bishop Shelton Fabre of the Archdiocese of New Orleans to lead us in the Invocation.

(Bishop Shelton Fabre walks to the podium)

#### **INVOCATION**

*Let us pray. Good and gracious God, You who are the foundation of justice and peace in our world and in our society, we who gather here call upon you always and indeed at this present moment to be near to us, to guide us and direct us. Lord of all time in history, in a particular way we ask your blessing upon this joyful gathering in honor of the 200th anniversary of the Louisiana Supreme Court . We thank you that throughout these 200 years those who were hungry and thirsty for justice and resolution have found it here in the discussions and decisions of this Court. We thank you for those justices in past history who have served on this Court. We thank you for those justices who currently serve on this Court. Guide them with Your wisdom.*

*May the Supreme Court of this state continue to stand before us as a beacon. That here in this place there is the opportunity through the peaceful resolution of law to seek a constructive response to all those differences and disagreements that would seek to*

*separate and to alienate us from one another.*

*May we be blessed because of our presence here, which is an indication of our high regard for this hallowed Court. Placing our hope and trust in You, we know that we shall never be confounded, for You are the one God living and true, now and forever. Amen.*

#### **LT. GOVERNOR JAY DARDENNE:**

Please remain standing for the retiring of the Colors.

### **RETIRING OF THE COLORS**

#### **LT. GOVERNOR JAY DARDENNE:**

Thank you, please be seated. May it please the Court, today we reflect on the 200th anniversary of Louisiana's highest court. Just throughout this

last year we celebrated 200 years of Louisiana statehood.

This Court was created in Louisiana's first constitution, which actually was adopted in January of 1812 in order to petition the Congress for statehood, which was

realized on April 30, 1812. While any legal system must be predicated on rules of order and conduct as well as precedent, it is also a hallmark of the American system of justice that change is inevitable both in statutory and constitutional law as well as interpretation by the judiciary.

This was perhaps never more evident than yesterday at the investiture of Chief Justice Bernette Johnson, who took her oath beneath the statue of Edward Douglas White, Jr., a former justice of this Court and the Chief Justice of the United States Supreme Court at the time of the centennial of this Court, in a moment that history tells us was not its finest. Then Justice White joined the majority in



1813 / 2013

upholding the constitutionality of the separate but equal clause of Louisiana's constitution of 1894. The case of course was *Plessy v. Ferguson* and arose from a simple train ride from New Orleans to Covington. This decision upheld de facto segregation and was the law of the land until overturned by *Brown v. Board of Education*.

Years later, however, Chief Justice White wrote the Court's unanimous decision in *Gwen v. United States*, which invalidated grandfather clauses that disenfranchised blacks, finding these state statutes to be repugnant and therefore null and void. Yesterday's investiture certainly was a lesson in the life of the law. In 1913, during the centennial celebration of this Court's creation, a verbatim transcript was made and published. Chief Justice White could not be present. He had a good excuse, he was swearing in the President of the United States. The Chief sent a letter, which said in part:

*"I earnestly hope that this occasion may serve to refresh in the memory of every Louisianian concerning the blessings which have been bestowed upon the state by the faithful discharge by this Court of the great duties which rest upon it. Indeed I trust that the ceremonies may not only do this, but may serve to revivify and strengthen in the hearts and minds of all the purpose to sustain and perpetuate the Court and thus guarantee individual freedom and representative government by safeguarding the life, liberty and happiness of all."*

Also speaking at the ceremony was Governor Luther Hall, who incidentally had been elected to the Supreme Court, but declined to serve, choosing instead to launch a successful campaign for Governor. Governor Hall spoke eloquently:

*"A century is a short time in the history of a state as history goes, but on this side of the Atlantic the swift tread of the free people has brought forth a record of great accomplishment and progress that has excited the wonder and admiration of the civilized world. The story of Louisiana, the pride of Spain, the hope of France, the glory of the American Republic and the mother of great commonwealths will echo down the ages with ever increasing interest."*

He went on to say:

*"When the people believe that their judges, in*

*the determination of cases, consult the wishes of powerful political and other interests and not the law, when they believe that their laws are set aside and twisted and distorted by construction to subserve the purposes of such favored interests, and when they believe that all men are not equal before the law as it is administered by its Courts then all faith in the established form of government will have been lost and new and dangerous experiments will be attempted."*

Those comments followed opening remarks by Joseph W. Carroll, the President of the Louisiana Bar Association and the Master of Ceremonies, who said:

*"The layman is prone to think and say that the courts generally are too far removed from the people and the judicial decisions do not respond readily enough to be advancing ideas of the people at large. They forget that courts are established to administer, not create the law. It is not for a court to be influenced by every passing sound, however loud or insistent."*

What has been loud and insistent during these past two hundred years, and certainly the past one hundred years, has been the independence of this Court and its willingness to rise above the concerns expressed by the two speakers whom I have quoted. On behalf of the people of Louisiana I say thank you and congratulations to those of you who now have the honor of serving and thanks to those of you who have come before you.

And now it is my pleasure to call upon the Chief Justice of the Louisiana Supreme Court for some welcoming remarks.

## **WELCOMING REMARKS**

### **CHIEF JUSTICE BERNETTE JOSHUA JOHNSON:**

Thank you, Jay. (Applause)

Exactly one hundred years ago, at this very same time, in this very same building, the Justices of the Louisiana Supreme Court assembled to celebrate the Centenary of the Supreme Court of Louisiana. Presiding that day were Chief Justice Joseph A. Breaux and four Associate Justices: Justice Frank A. Monroe, Olivier O. Provosty, Alfred D. Land and

Walter Sommerville. Louisiana Governor Luther E. Hall and New Orleans Mayor Martin Behrman were also in attendance and the courtroom was decorated much as it is today. Just as our brethren of yesteryear found it appropriate and fitting to mark the occasion of the first one hundred years of the Louisiana Supreme Court in a significant manner, so, too, do we today find it appropriate and fitting to mark the occasion of the second one hundred years of the Supreme Court in this special Bicentennial Ceremony.

Joining me today in welcoming you are the sitting Justices of the Louisiana Supreme Court – Justice Jeffrey Victory of Shreveport, Justice Jeannette Theriot Knoll of Marksville, Justice John Weimer of Thibodaux, Justice Greg Guidry of Jefferson and St. Tammany Parishes, Justice Marcus Clark of Monroe, and our newest Justice, Justice Jefferson Hughes of Denham Springs.

We are also very honored to be joined on this historic occasion by several retired justices, including Chief Justice Kitty Kimball, Chief Justice Pascal Calogero, Justice Jim Dennis, Justice Harry Lemmon and Justice Chet Traylor. It's also nice to see our retired Clerk of Court, Frans Labranche, Jr., our former Judicial Administrator, Dr. Hugh Collins, and the previous Director of the Louisiana Law Library, Ms. Carol Billings.

I'd also like to recognize and thank Secretary of State, Tom Schedler and Trey Phillips, the First Assistant Attorney General, along with all of the other Bar leaders, state legislators, and state judges who are here today: Maybe we can have all of you stand at this point and we can be sure to recognize all of our legislators, judges and elected

officials who are here with us today. (Applause)

Thank you. We are happy to have with us the President of the Louisiana State Bar Association, Mr. John Musser, and the incoming President of the Louisiana State Bar Association, thank you so much. We also have, as I've said, several judges who are present; I know some of you by name and didn't want to omit any, just by reference I know some folks are always offended when their names are omitted.

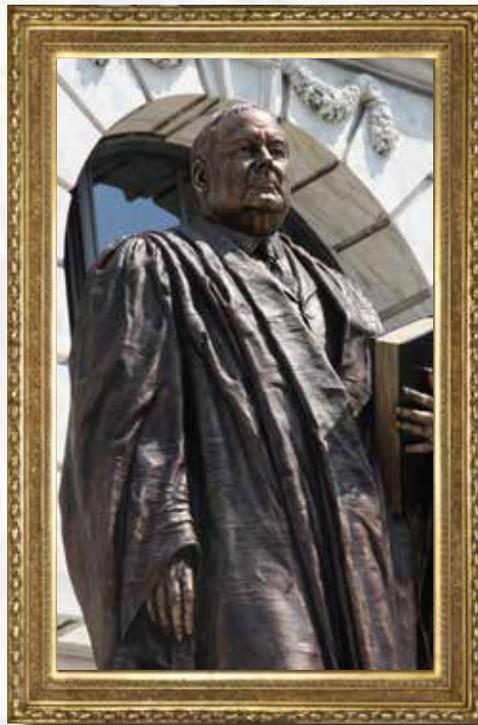
A few minutes ago we were led in the Pledge of Allegiance by Ms. Donna Fraiche, who is President of the Board of Directors of the Supreme Court Historical Society. Many of the members of that Board are in the courtroom; if you could please stand now to be recognized. (Applause)

Thank you for being here and for everything that the Historical Society does to support the Louisiana Supreme Court. The Historical Society was first formed through the efforts of Chief Justice Calogero and Justice Jim Dennis, and was revitalized with the help of the late James Coleman and Judge Eldon Fallon. I don't know if Judge Fallon is with us here today. Judge Fallon is here. (Applause)

I would like to thank and recognize the President of the University of New Orleans, Dr. Peter J. Fos, is he here? (Applause)

Thank you for your continued support of housing the Court's oldest records,

dating from 1813 to 1921. In 1976, our Court and the University of New Orleans signed an agreement for the University of New Orleans Earl K. Long Library to house and preserve our records. The records at that time were stored in the basement of 301 Loyola and were in dire need of preservation. Associate Justice Albert Tate called on a young professor for help, Professor Warren Billings, who



1813 / 2013

is here with us today, and he is one of our speakers. He suggested the unique partnership with UNO to preserve our oldest records, lest they vanish and our history vanishes. The collection occupies over 2700 linear feet of storage at the library, and the documents have been microfilmed and digitized. Were it not for the foresight of Justice Tate and Professor Billings, this commemoration might very well have been much diminished.

Finally, I want to thank and recognize Justice Greg Guidry, who has chaired the Court's Bicentennial Committee this past year. Justice Guidry and his committee members have worked long hours to put together not only an educational and enjoyable program for you this morning, but they also have over the past year presented programs at the Cabildo, a program in Natchitoches and the ceremony that today captures the history of the Louisiana Supreme Court, if we could have those committee members stand and to be recognized at this time? (Applause)

Thank you for your hard work this year on this project.

We are pleased to have several distinguished speakers today, and I thank them for their participation. I also want to mention that the April/May issue of the *Louisiana Bar Journal* will include articles relevant to the history of the Court by authors who are not speaking today, and I would like to thank them for their contributions to the upcoming Bar Journal – Chief Judge Gene Thibodeaux from the Third Circuit will have an article. I don't know if he's here present today. Professor Olivier Moréteau and Professor Paul Baier from LSU, and Mr. Phelps Gay, will also have articles. So we ask you to wait and look forward to that Bar Journal article on this event.

We will be publishing a commemorative booklet after today's ceremonies, and if you would complete a form that we have available, we will send you a copy of that booklet. We've created also a Bicentennial webpage on the Court's website. Today, as we celebrate two hundred years of history of our Court, I am pleased that we have young people participating in this program. We have a very impressive group of students from the International School who will be performing a skit on the birth of Louisiana. Some very talented students from the

Lusher High School Jazz Combo will be entertaining during the reception, and so we are extremely pleased to have young people involved in this program today.

Several months ago, in commemoration of the Court's Bicentennial, we held oral arguments, as I said, at the Cabildo, where the Louisiana Supreme Court was housed from 1853 to 1910. We held Court in the Sala Capitular, the original room where oral arguments were held.

The first home of the Louisiana Supreme Court no longer exists, but we have the very next best thing – a model for you to view.

On your way into the courtroom this morning you may have noticed the model of the Government House of the French Colony of Louisiana, home of the French Superior Council. The Government House was built in 1761, and was located not far from here, at Toulouse and Decatur Street here in the French Quarter, about 200 feet from the Mississippi River. After statehood, the Government House was occupied by the Louisiana Legislature and then became the Louisiana State Capitol until it burned in 1828. The Louisiana Supreme Court first convened at Government House on March 1, 1813, two hundred years ago today. We have Lt. Governor Jay Dardenne to thank for having that model here today; it is on loan from the Louisiana State Museum.

Again, thank you and welcome. We appreciate every one of you for being here today to share and to mark this historic occasion with us, and I'll turn the program back over to the Lt. Governor. (Applause)

#### **LT. GOVERNOR JAY DARDENNE:**

Thank you Chief. It's actually two of our museum staffers who we really should thank for this wonderful model and I want to recognize them: Polly Rolman-Smith, who is the curator of Science and Technology, and Jennae Biddiscombe, our museum registrar, have worked to make this possible. (Applause)

Our first speaker today is Professor Richard Campanella. Six-time author Richard Campanella is a senior Professor of Practice at Tulane School of Architecture. In addition to his award-winning works, Professor Campanella has been honored

1. Justice Jeannette Theriot Knoll leading the National Anthem during the Bicentennial Celebration ceremony (March 1, 2013)

2. The 2009-2013 Louisiana Supreme Court with historical characters at the Cabildo (May 7, 2012)

3. Chief Justice Catherine D. "Kitty" Kimball (2009-2013 as chief); Chief Justice Pascal F. Calogero, Jr. (1990-2008 as chief); Chief Justice Bernette Joshua Johnson (2013-Present as chief) gather for the Bicentennial Celebration ceremony (March 1, 2013)

4. Past and present Louisiana Supreme Court Justices at the March 1, 2013 Bicentennial Celebration

5. The Cabildo hall outside of the Sala Capitular (May 7, 2012)

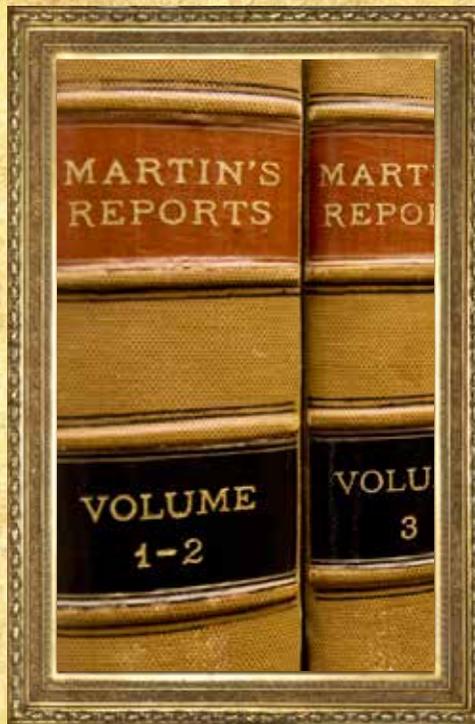


with the Williams Prize for Louisiana History and Tulane's Mortar Board Award for Excellence in Teaching. Professor Campanella will take us on "A Walk through the Streets of New Orleans at the Time of the Court's Foundation." Professor. (Applause)

(Professor Campanella walks to the podium)

**PROFESSOR RICHARD CAMPANELLA, M.S.:**

Thank you, it's an honor to be here. I'd like to take you back to the era of the Court's foundation focusing in on the 1810s, 20s, and 30s. Two hundred years ago Westerners pressed their political representatives for what Americans at the time called internal improvements—that is, transportation infrastructure. New Orleanians did the same locally. First on their priority list was the main riverfront port and wharf, a plank-covered platform 40 yards wide, thousands of feet long, and open to the sky. To its scores of docks moored "the most extraordinary medley of craft of every possible variety" including ships, brigs, schooners, sloops, barges keelboats, flatboats and steamboats. The great fleet fronted sundry cargo and ant-like "bustle and confusion" circulating upon the spacious landing, which was in constant need of repair, expansion and upgrading. By one estimate, the New Orleans riverfront rated as the fourth port in point of commerce in the world, exceeded only by London, Liverpool and New York. By another it represented "the leading export city of the United States and one of the leading ports of the world." It also employed thousands of New Orleanians and brought outside currency into local coffers in vast quantities.



A second target for internal improvement vied to connect New Orleans to its hindquarters like Lake Pontchartrain. Firewood, lumber, pitch, tar, fish and fowl generally came from the marshes and piney woods in and around Lake Pontchartrain. French colonials had used Bayou St. John and Bayou Road to access these lake resources since 1718. Spanish colonials superseded that route by excavating the Carondelet Canal in 1794. This is the present day Lafitte Street corridor. Demands on the growing population in the American era motivated Creole businessmen in the lower city to solve the lake access problem with the exciting new technology, railroads. They formed a company in 1829; won a state charter in 1830, laid five miles of track along Elysian Fields Avenue and inaugurated the Pontchartrain Railroad in 1831, the first one west of the Appalachians. Its success piqued the interest of uptown Anglo-businessmen who envisioned a superior artery for their district. In 1831, the New Orleans Canal and Banking Company invested four million dollars to build a sixty-foot-wide waterway and toll road connecting Faubourg St. Mary with Lake Pontchartrain. This is the present day I-10 corridor between roughly the Superdome and the cemeteries. Completed in 1838, the "New Basin Canal" distinguished from the Carondelet or the "Old Basin" succeeded commercially, bringing into the American quarters a steady stream of sand, gravel and shell for fill, lumber, firewood and charcoal; fruit, vegetables, cotton and seafood and other cargo from the lake and Gulf. The typical New Orleanian purchased goods shipped on these arteries on a daily basis. All three would survive well into the twentieth century.

A concurrent improvement brought passenger railroads to city streets. In 1833 Uptown investors, aiming to create valuable real estate in the upper banlieu, (what we now call uptown) won a charter for the city's second railroad. Gaining access to a 120-foot wide easement along multiple sugarcane plantations, they laid 4.5 miles of track along Nyades Street; present day St. Charles Avenue to the Jefferson Parish town of Carrollton. The New Orleans and Carrollton Railroads commenced full schedule service in September 1835. With this trunk line in place New Orleans would, over the next ninety years, develop a vast and intricate urban streetcar system, including a line right here on Royal past this courthouse.

For every day folks the most relevant internal improvements were those that upgraded city streets. Much upgrading needed to be done: American-era streets deviated little from colonial times, a failure that Anglos unreservedly blamed on the Creole political establishment. The Anglophone newspaper animatedly reported one native of Kentucky who, "attempting to cross a street of the Anglo-dominated Faubourg St. Mary" after a heavy summer rain in 1806 "got out of his depth and not being able to swim was unfortunately drowned." The editors pondered whether the accidental death ought to be held against the corporation of the city. Others might have pondered whether inebriation contributed to the demise of the hapless yokel.

It took another eleven years before the city finally gained its first stone-paved streets; Gravier between Tchoupitoulas and Magazine and an additional five years before they launched a city wide paving campaign. That 1822 effort, which started here on Royal, hardly solved the problem. Residents continued to hop among puddles, ditches and manure much like their ancestors did a century prior. Even worse were the sidewalks, which were called footpaths, footways and causeways in English and trottoirs and banquettes in French. Old wooden sidewalks were replaced with brick ones starting in

1820, but that project proceeded only when funds became available.

In the street proper, hackmen and their passengers had their teeth rattled as carriages bounced along washboard surfaces. Wheels and hoof-beats deepened potholes, which collected water, which in turn stagnated and produced mosquitoes, algae, slime and stench. "We were on the whole of yesterday assailed by so unsavory a smell," bemoaned one informant in 1826. "The whole street from Bourbon to Royal suffered alike; such nuisances will give us yellow fever in abundance."

Even more critical to daily lives was domestic water. New Orleans needed it to drink, cook, bathe and clean both inside and outside. An 1817 public-health law mandated that residents water down the dusty streets and banquettes fronting their houses daily. Citizens obtained water from a variety of sources. Some would purchase it from street vendors - one picayune for four buckets - or task their domestics or children to scoop it directly from the Mississippi. Others would collect rain water running off their roofs or dig wells in courtyards and store it in cisterns. They would then remove impurities with stone, alum or charcoal filters and store the cool and transparent water in earthen jars for drinking.

Each method required much labor and yielded little potable water, creating a niche for entrepreneurs: enter the private water system. One attempt worthy of biblical times came in 1810 on the levee at Ursulines Street. Slaves pumped river water into a raised tank, which thence flowed by gravity through hollow cypress logs to subscribers.

Famed architect Benjamin Latrobe designed a better system a few years later, in which a steam engine mounted in a three-story pumphouse would draw water from the Mississippi, store it in raised cast-iron reservoirs, and distribute it through a network of cypress pipes to subscribing residences or to cast-iron boxes at street corners. Latrobe's waterworks served this area from 1823 to 1836.

Garbage was collected in antebellum



New Orleans six days a week by a city “publican” or a contractor in a horse or mule-drawn cart into which residents deposited “fill, and kitchen offals” brought out in “tubs, hampers, baskets.” Strictly forbidden were “dung, chips, shavings and feculent matter” which individuals had to discard themselves. Chamber pot contents could only be moved through the streets at night and emptied into the current of the river, the same river that served as a water source for folks downstream. For garbage collection, citizens had to bring their debris outside as the cart approached. The contractor did not pick up anything from the curb except dead animals and street litter. The policy forced residents to wait endlessly listening for the cart to approach. In 1819 an ordinance corrected this law by allowing the storage of garbage in containers placed near the gutter of the footway opposite the respective building.

As in colonial times, street illumination in the early 1800s came from oil lamps suspended to iron chains, which were stretched from the corners of houses or high posts diagonally across the junctions. They were maintained daily by city- paid lamp lighters who doubled as city guards or policemen. Smaller oil-fueled lamps and candles provided lighting inside all other New Orleans homes until 1834, when the New Orleans Gas, Light and Banking Company commenced operating a plant in the rear of the American Sector, roughly where the Superdome is today. Lines laid throughout St. Mary and the French Quarter allotted gas to paying residential, industrial and commercial subscribers, particularly theaters and exchange hotels. By the 1850’s, gas also fueled city street lights, although many lanterns still used oil. The city contracted with New Orleans Gas to

service both gas and oil street lamps, scheduling their daily lighting and extinguishing to take full advantage of diurnal and lunar cycles and penalizing the company for malfunctioning lamps. Until electrification arrived, starting in the 1880s, the lamplighter’s task formed an integral part of the daily ritual that was street life in New Orleans two centuries ago. Thank you. (Applause)

**LT. GOVERNOR JAY DARDENNE:**

Our next speaker is Professor John Randall Trahan. Professor Trahan, Louis B. Porterie Professor at LSU Law School, received his J.D. with high honors from LSU, joining the faculty there in 1995. He is widely considered an expert in the

area of civil law systems. As a member of the Persons Committee of the Louisiana State Law Institute, Professor Trahan actively participates in law reform work. He will discuss “The Civilian Aspects of Louisiana Law.” (Applause)

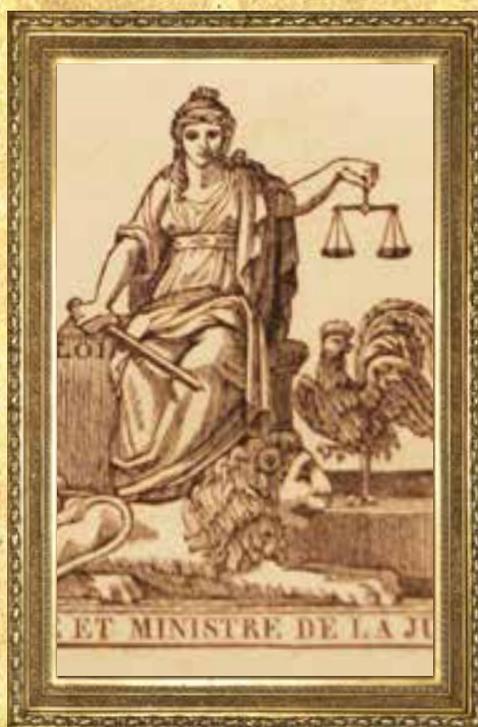
(Professor Trahan walks to the podium)

**PROFESSOR JOHN RANDALL TRAHAN, J.D.:**

Bonjour messieurs/ mesdames; someone had to speak French. It might as well be the Cajun presenter. Thank you Lt. Governor Dardenne, Chief Justice, Justices of the Court, especially you, Justice Guidry, for inviting me to be here with you today. As you

can see from your program and as the Lt. Governor himself just said, my talk to you today has been billed as the Civilian Aspects of Louisiana Law, but I’ve made that presentation before and that was on the occasion of the Bicentennial of the Founding of the Federal Court, to which Judge Lemmon had invited me.

It seemed to me that on this occasion



it might be wise for me to go ahead and tailor my remarks to the occasion that has brought us together, and that of course is to celebrate the bicentennial of the founding of the Louisiana Supreme Court. So instead of talking to you about the civilian aspects of Louisiana law in general, what I propose to talk to you about today is instead the role of Louisiana Supreme Court in preserving and developing the civil law tradition in Louisiana.

Way back in 1813, when it was perhaps even more difficult to get from Baton Rouge to New Orleans than it was for me to do so today, and when this Court was first founded, the Justices faced a singular challenge. Singular in a sense that their counterparts, that is, justices on other newly formed state courts elsewhere in the fledging United States, didn't have to worry about anything like it. Well, what was that challenge? It was to work within two very different legal traditions. Now, those traditions are: common law and civil law.

First, common law, which is also known as the Anglo-American legal tradition; well, that's the one that every newly-formed state supreme court had to deal with whether it was here in Louisiana or over in Mississippi, for example. But the second, the civil law tradition or sometimes called the civilian tradition, the continental tradition, that's the one that was the unique concern of the Louisiana Supreme Court. Not only were these traditions different in terms of the content of the rules that were a part of them, but they were also different in terms of the legal vocabulary in which the rules were cast.

They were different in terms of the methodologies through which the law came to be created and the first place through which it was later interpreted and applied. They differed in terms of their sources and finally they differed in terms of the languages, about which I'll have more to say in a minute, if I don't forget about it along the way. Well, the challenge then is for this Court to work in both traditions. Now, let me be clear, I am not saying work in both traditions at the same time, in the sense of having to draw on both traditions to

solve a single case. That's not true. These two legal traditions in terms of their sphere of application were pretty well delineated and separated off from each other. The Anglo-American tradition is what the new Louisiana Supreme Court applied to what we called the public law. That is the part of the law that governs relations between the government and individuals. For example, criminal law, what we now call constitutional law, tax law and so forth. The civil law, on the other hand, that tradition was to be applied to what we now call the private law. That's the part of the law that regulates the relations between private individuals or between the government when it's acting as a private individual or individuals. Now at the time of the founding of the Louisiana Supreme Court, just in terms of the size of the law, the private law was much more vast than the public law. It included the law of family, the law of contract, the law of tort (personal injury-type law), the law of inheritance, the law of property and even the commercial law. So

it's again, a vast field. It sort of eclipsed in terms of its size, the field that was covered by this Anglo-American law.

Now what is my task before you today? It is to talk to you about and to trace for you the history of this Court's role in preserving and developing, as I've said before, the civil law, this distinctive tradition. Well, if I'm going to do that, then first of all I have to give you a little bit of an idea of what the civil law tradition is, and at this point all I can say is, so much to say, so little time with which to say it. I'll do my best to summarize the civil law for you in two minutes. Time me, Chancellor Weiss.

Well, what we now know as the civil law had its roots in the law of ancient Rome where it was called the *jus civile*, which translated into English is "civil law". The very first representation of this law that we still have a historical record of is what is known as the Twelve Tables. This was law that was actually written down on tablets and displayed in the marketplace for all to see. And it's important I think if you want to understand what the civil law



1813 / 2013

is, to understand that was its origin. Because that is emblematic of what becomes one of the distinctive characteristics of this tradition. And that is the civil law is going to be a tradition in which the law is written down in advance of litigation. Well you might say as opposed to what? Well, as opposed to being made up, as it were, on the fly by judges in the course of deciding cases, which becomes one of the hallmarks of at least the ancient common law tradition.

All right, well, we start with the Twelve Tables, then we have input in terms of legislation on the part of the senate, input on the part of governmental officials called praetors, who had a dual role. They were judges for some purposes; but also legislators for others.

Another significant contribution in the development of this ancient Roman law called the *jus civile* was made by people like me. That is legal eggheads (they weren't called eggheads in ancient Rome, they were called *jurisconsults*) but their job - and they performed this job over two hundred and fifty years - was to try to harmonize the legislation that had been made by these different sources, including, of great importance, the praetor and his edict.

The Twelve Tables fill in the gaps, and then to systematize them in a way that struck them as being rational and imminently logical is where the civil law gets its foundation. The civil law falls into something of a desuetude after the fall of the Western Empire. What we now call Barbaric Germanic Law largely took its place, but then in the high Middle Ages, a sort of a movement that you might consider to be a foreshadowing of what we later called the Renaissance, there was a rediscovery of Roman law. This was really an intellectual rediscovery, not a physical rediscovery of a document, but an intellectual rediscovery - again it's the scholars. The first wave of scholars were called Glossators. The second wave of scholars were called, brace yourselves, this is brilliant, called post-Glossators, yes. Well, they began to get interested again in this whole Roman law, which they saw as being actually better adapted to the needs of the day than the customary law, which had a lot of futile elements in it. I could say more about that, but I don't have a lot of time.

In any event, as a result of the work of these scholars, eventually, this revived Roman law gets put into place and put into force throughout most of what we know as Western Europe today. Now when these Western European countries began to colonize in the New World, which of course would include our beloved Louisiana, what did they do? They brought with them their own law and put it into place. Now let me say something specifically about the civil law here in Louisiana. In the first colonial period, the European colonial period - that we recognize here which was the French period, starting around 1700 or so, the French of course put their law into effect, but the French law that was put into effect was not pure civil law, but rather northern French customary law. It still had upon it the imprint of the civil law because civil law trained scholars had written it down once before and had elaborated it, but it really wasn't until the second colonial period that of the Spanish, starting around 1765, that we see true civil law being put into effect here in Louisiana. Again, it was the Spanish variant of this civil law. This revived civil law from the Middle Ages with its roots all the way back in ancient Rome.

Time goes on, we get to the third colonial period which you Americans know as, notice I call you, "you" - I still think of myself as a pre-American Frenchman in some respects. Anyway, what you Americans would call the territorial period, the law didn't change. In fact, during those first few years after Louisiana became an American territory in 1803 up until near the time of the founding of this Court, there was a great struggle here in Louisiana over whether or not the civil law tradition that had theretofore been established primarily again, Spanish civil law, would be preserved or whether it would be displaced by Anglo-American common law. On the one hand you had Governor Claiborne, appointed by President Jefferson. Then on the other hand you had traditional Frenchmen with names like Livingston (laughter). Yes you should laugh, that is not a French name, it is an English name, but Livingston had come here and had grown enamored of Louisiana civil law and became one of its chief partisans. In any event, at the end of the day, the battle is in favor of the traditionalists and Louisiana civil law is preserved. In 1808 it's actually codified

in what we now know as the *Digest of the Civil Laws Now in Force in the Territory of Orleans*. That becomes the first civil code in the New World and one of the first civil codes anywhere in the world.

Now, I can start talking about what this wonderful Court, in its very early days, did with the civil law tradition that was already in place when the Court was set up. Now I want to divide the history of the Court's dealing with the civil law into four periods.

We will start with what I call the Golden Age. All historians always think that the farther back we go it's more golden, right? So I'll call that the Golden Age. Then we will talk about the period of civil law decadence, after that the civil law renaissance, and then the contemporary period.

Well, what do I have in mind when I say the Golden Age? Well, that would be the period from 1813 until around 1875 or so. At this point in time the Louisiana Supreme Court and the lower courts were very, very much partisans of the Louisiana civil law tradition. They took the tradition seriously, and so whenever cases came before them that fell within the scope of the private as opposed to the public law, they consulted the appropriate sources, which would be all these various Spanish sources as well as the *Digest of 1808*. They developed some opinions that really even today are masterpieces; extensive quotations from Roman law sources, from Spanish law sources, from French law sources on occasion, as well as very careful exegesis of the provisions of the *Digest* and after that the *Code of 1825*, which took its place. Really it was incredibly fine work showing a very great and heightened sensitivity to the Louisiana civil law tradition.

You can subdivide this period into a Spanish sub-period to start with and a French sub-period in the first few years from 1813 through 1845 or so. This Court focused primarily on Spanish law authorities in interpreting Louisiana civil codes, which makes sense given what I've told you. It was Spanish civil law, after all, that was in place, but after 1845 or so this Court started ignoring the Spanish

authorities for purposes of interpreting Louisiana civil law in filling in the gaps, again looking at French authorities. There is lots of speculation as to why that might have happened, but primarily it was probably a function of language. The Spanish sources were in Spanish, the French sources were in French, and by 1845 there were very few people left in Louisiana who could read Spanish.

In any event, now let's now move to the second period. The period of civil law decadence, maybe 1875 up until around 1940 or so. I call this the period of civil law decadence because to judge from what the courts were doing, and I'm sad to say, on this Court- of course, that wouldn't include anyone who is presently here, so I don't feel like I'm stepping on any toes- no one was paying any serious attention to the Louisiana civil law tradition. Often times, cases that arose within the sphere of the private law were decided on the basis of citations to prior Louisiana appellate court decisions and then citations to

*Am Jur* or *Corpus Juris* in any event Anglo-American compendiums of law and Anglo-American legal authorities. It's for this reason that Professor Yiannopoulos, writing about the cases that were decided in the 1920s and 1930s said when you read the cases you get the opinion, the impression that the Louisiana civil law tradition was dead. And, in fact, the impression was so strong that a young professor at the Louisiana State University of Law School named Ireland wrote an article in which he said: the civil law tradition in Louisiana is dead. It's time to acknowledge that and to recognize that Louisiana is now functionally a common law state, and once he did that, all hell broke loose.

His senior colleagues turned on him, he was not granted tenure. After that he's reputed to have moved out west maybe to Montana, but we're really not sure, he sort of dropped off the face of the Earth. The sad truth is that there was a lot of truth in what he had written, but it served as a wake-up call to the partisans of the tradition to start talking about it again and to start writing about it again.

Now this effort, this is what we call the civil



1813 / 2013

law Renaissance. It started in the law schools with people like me, eggheads, but it eventually spread to the Legislature. The Legislature set up the Louisiana State Law Institute, part of whose mission was to develop new materials for the better understanding of the Louisiana civil law tradition, and then eventually the bug bit this Court. In particular, it bit Chief Justice Joe Sanders, who in 1967, we believe in a similar article written in *Louisiana Bar Journal*, chided Louisiana lawyers for citing Anglo-American authorities instead of civilian authorities in cases that arose within the scope of private law. He basically said: start citing civil code articles and then tell us how they should be interpreted using civilian interpretive methodologies and then cite, instead of Anglo-American sources of authority, civilian sources of authority; be that Louisiana authority, French authorities or Spanish authorities. Of course when the word came down from the Chief Justice everybody fell in line. After that we do see a renaissance of interest in and a renaissance in the development of the civil law tradition.

When does that end? Some people would say that it didn't end. I think it did. I think it ended in the 1990s. I think it ended whenever the Legislature engaged in what we call tort reform, which basically shut down this Court's innovations in the field of tort law. That's where a lot of civilian methodology had been used, and around the same time we curtailed forced heirship, which was a distinctive Louisiana and civil law institution. And, about the same time, I have it on good authority from Professor Yiannopoulos that one day at a sidebar at a Law Institute Council meeting, the then-president of the Law Institute went over to Thanassi after Thanassi had been complaining about certain proposals not being consistent with the civil law tradition and this president, whose name I will not mention only out of Christian charity, said: Thanassi, you know nobody cares about that stuff anymore. Well, when the president of the Law Institute says something like that, that's a sign that whatever rebirth was going on is in serious trouble, but maybe that's just him. Maybe that's just certain persons on the Law Institute Council.

I'm happy to say in the contemporary period, so far as I can tell, this Court is still very much enamored of Louisiana's civil law tradition

and it's remained faithful to it. Every year you can perform this exercise, every year you can get on Westlaw, get on LexisNexis, whatever you prefer, punch in searches of Louisiana Supreme Court decisions using the names of the great French *juriconsults* and then the names of the great Louisiana *juriconsults* like Yiannopoulos, Litvinoff and Trahan – and what you will find is (laughter) – still hundreds of citations accompanied by a very careful exegesis of the relevant civil code provisions. So Justices of the Court, I salute you for that and I encourage you to keep on keeping on. Thank you so much. (Applause)

#### **LT. GOVERNOR DARDENNE:**

Thank you Professor. Now if you will allow me one brief post-script: Those were very interesting remarks. It's not surprising that what the Professor is trying to describe was symptomatic of what was happening in Louisiana in the early 1800s when the decision was made whether or not Louisiana would become a state. After the Louisiana Purchase it was expected that all the territories would eventually become states, but there was a lot of rancor and a lot of disagreement in the halls of the United States Congress as to whether or not that would happen.

They looked at Louisiana and we were different. We were different then and we are different now. Louisiana was multi-colored, people had different skin hues, spoke different languages, both French and Spanish. They were predominantly Catholic. Everyone on the eastern seaboard, members of the United States Congress looked at Louisiana and said we just got rid of our allegiance with Europe. Why would we want to reinstate it by allowing Louisiana to become a state. Fortunately they did and the issues you discussed are very symptomatic of that time, and the fact that this side of Canal Street occupied by French and Spanish and Creoles, and Free People of Color was distinct from the other side of Canal Street now known as the American Sector. It was called that because that's where the Americans the new kids on the block, the minority, white Anglo-Saxon Protestants, who came from what was America, came to Louisiana. So, that is what makes our history so rich and our culture so rich and the law is certainly a symptom or really is a reflection, rather, of who we were as people. We

were that way then and we are to some extent that way now.

Our next speaker, Professor Raphael Cassimere, joined the UNO history faculty in 1971, retiring as a Seraphia D. Leyda University Teaching Professor, Emeritus in 2007. Highlighting Professor Cassimere's civically active career is his being awarded the A.P. Tureaud Black Citizenship medal, the highest award conferred by the NAACP in the state. Professor Cassimere is the author of *African Americans in New Orleans Before the Civil War*. Professor Cassimere will speak on "The Role of the Louisiana Supreme Court in the Early Civil Rights Movement." (Applause)

(Professor Cassimere walks to the podium)

**PROFESSOR RAPHAEL CASSIMERE JR., Ph.D.**

Morning and Bonjour. "A voteless people is a hopeless people" was the slogan of the *Louisiana Weekly* for many years. It aptly described the conditions of African Americans in Louisiana. For much of their history, black Louisianians were denied the basic right to vote, which made them an impotent political constituency, treated more like wards, rather than citizens of the state. Thus, they could not hold accountable their public officials. The long and bitter struggle for civil and political equality spanned the state's history. But prior to the Civil War, because no African American in Louisiana could vote, no public official responded to their cries for equal justice.

A study of the role of this Court, the Louisiana Supreme Court, in the early civil rights movement shows that it was largely negative. For much of its history this Court was at best indifferent, and at worst, hostile to the interests of people of color. Its earliest decisions made clear that the state

government was created, by and for white people. To be sure, however, these views were consistent with those of other courts, including the national supreme court. For example, in 1857, in the Dred Scott case the United States Supreme Court similarly ruled that no black person, free or not free, was a citizen of the United States; and blacks "had no rights which whites were bound to respect." Not surprisingly then, two years later, in one of its earlier decisions defining the status of black people, the Louisiana high court ruled, "the African race are strangers to our constitution and they are subject of special, exceptional legislation."

But, during a brief period of reconstruction, the Court's views changed

somewhat, perhaps in part because African Americans had gained the right to vote. Black officeholders helped to write a new "colorblind" constitution and passed anti-discrimination laws. Subsequently the state high court ruled that black citizens were now entitled to the equal protection of the law as guaranteed by both the 14th Amendment and the state's new constitution. Specifically, the Louisiana Supreme Court upheld a district court ruling in *Hall v. Decuir*, which ruled that common carriers, such as railroads and steamboats could not refuse admission to, or expel anyone from their

conveyances. This victory was short-lived because only a few years later the Federal Supreme Court reversed the ruling and overturned Louisiana's anti-discrimination law, supposedly because it intruded upon Congress's plenary power to regulate interstate commerce.

The ruling in *Hall v. Decuir* was the last time for a long time that the state's high court



ruled that black citizens were entitled to the same rights as whites. Thereafter, the state followed the lead of the United States Supreme Court. About a decade after the Hall case, the state supreme court sustained New Orleans Judge John H. Ferguson's ruling that the state's newly enacted "separate car act" neither violated the state or federal constitution because it provided for separate but also equal accommodations for the races. In reality however, the public facilities for the two races were always separate, rarely equal, and in many instances non-existent for black citizens. Additionally, at the end of the 19th Century the state eliminated practically all the black electorate and sent African Americans on a downward political spiral, which ensured that this impotent constituency would continue to be equally ignored.

Consequently for most of the first half of the 20th Century the lives of black Louisianans remained unchanged. With the loss of voting rights, it could not hold accountable their elected officials, including Supreme Court Justices for whom they could not vote. Unable to demand equality, they begged not for an equal slice, but for crumbs. Even Walter Cohen, the South's highest ranking black federal officeholder, conceded his race's impotence. Cohen said, "We recognize that this is a white man's country and we are at your mercy. We are not desirous of social equality."

Cohen was aware that only 598 of the state's more than 190,000 registered voters were African-Americans. I'll repeat that, in 1923 only 598 of the state's more than 190,000 registered voters were African-American, and such political impotence not only affected African Americans in the selection of public officials, but also in seeking justice in the state courts. Generally black litigants, if possible, sought judicial relief in federal court. But sometimes state courts could not be avoided especially in criminal matters. During the first half of the 20th Century, the bulk of cases brought before the state Supreme Court involved criminal appeals of black defendants convicted of murder and sentenced to death. In most of those cases, the appellants alleged the exclusion of African-Americans from juries, in violation of both state and federal constitutions. In the majority of the state's parishes no black had served on a trial jury for more than a half century.

Since jury pools were drawn from voters' lists, it followed that the chance of selecting even one African-American juror was infinitesimal.

However, in 1935 the state high court did order the re-trial of a black defendant in Washington Parish, not because there were no black jurors, but because his defense counsel had not been given sufficient time to prepare his case. The lawyer met the client a day and a half before the trial. The Court's ruling notwithstanding, a mob entered the prison and murdered the defendant before he could be retried. Even though the perpetrators were known, no one attempted to bring them to justice.

In another case in 1939, the Supreme Court returned to its former role and refused to overturn a conviction of a black defendant who alleged that potential black jurors had been intentionally excluded from the jury. While conceding that no black had served on a local jury since 1896, the justices were not disturbed that only four of 300 potential jurors for both the grand and trial jury were black. Instead, the Court concluded, "it is reasonable that jury commissioners should prefer members of their own race. It is not their duty to search the parish for members of the colored race who possess the proper qualifications merely in order that there be names of such persons on the rolls." The justices failed to explain whose responsibility it was to assure a fair cross-section of potential jurors. Despite a successful appeal to the United States Supreme Court, this defendant was subsequently retried, convicted and executed.

Because civil rights lawyers usually bypassed state courts in favor of federal courts, the state Supreme Court played only a minimal role in the activist phase of the civil rights movement as it heated up in the sixties. But in 1962, it reversed the conviction of members of the Congress on Racial Equality, who had been convicted for distributing leaflets on Canal Street. However, in a related case, it sustained the conviction of CORE's field secretary for using "inflammatory speech which turned a protest into a seething mob."

Eventually, because federal civil rights laws and court decisions ended most forms of legal segregation throughout the nation, there was not much good or harm for state courts to do. In an interview I had with former Chief Justice John B.

Fournet, he indicated that after passage of the Civil Rights Act of 1964, he ordered removal of all race-related signs from the Court's restrooms and seating areas. In a strange twist of fate, though, Fournet had to later depend on support from attorney A.P. Tureaud to secure black votes when he ran into an unexpected challenge to his seat in 1963.

Even after passage of new civil rights laws, there were still criminal cases alleging jury exclusion, such as the conviction of NAACP State President, Emmitt J. Douglas, who was convicted of setting off a riot in 1969 in Baton Rouge. He was convicted by a vote of 11 to 1. The lone vote for acquittal was cast by the only black juror, but in a narrow 4 to 3 vote the high court overturned the conviction because it infringed free speech. Of note was the fourth and deciding vote cast by the Court's newest member Pascal Calogero, who Douglas affectionately dubbed, "St. Pascal."

Over time, the Court's view changed, especially as the political fate of African Americans changed. No longer voteless by the mid-seventies, this former impotent constituency had gained power and could no longer be ignored. The Court's new moderation also resulted from the adoption of the state constitution of 1974 with its enlightened bill of rights, which specifically repudiated "separate but equal," and declared voting a fundamental right. The state's judiciary was also infused with an increased number of black judges, including membership on the highest court itself, which is now led by a black woman. The civil rights movement has been transformed. It is no longer limited to advocating on behalf of black Americans only, but also women, gays, lesbians, the aged, and the handicapped;

a larger and more powerful constituency. Undoubtedly in the future its members will find a more sympathetic hearing from a Court whose diverse membership now reflects more accurately the entirety of this state. (Applause)

#### **LT. GOVERNOR JAY DARDENNE:**

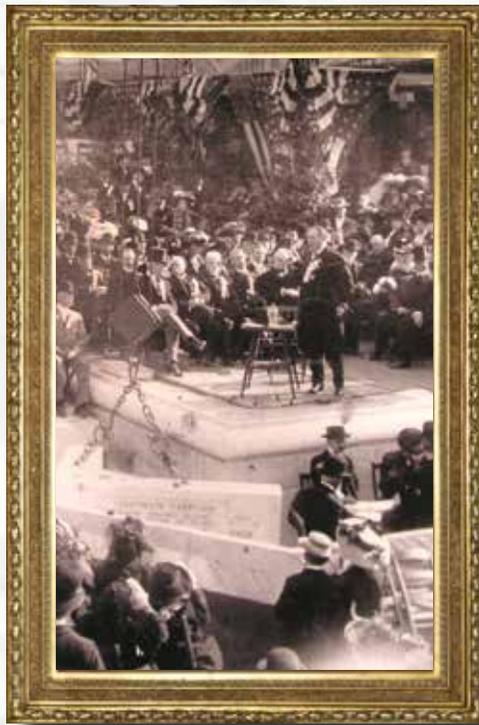
Thank you Professor. Our next speaker was recently appointed Louisiana Supreme Court Bicentennial Historian by the justices of this Court. Professor Warren Billings has published numerous books and essays on Louisiana law, the Louisiana Supreme Court and the court system. He is a distinguished professor of history, Emeritus,

from UNO, where he was a member and later chair of the History Department faculty from 1968 to 2005. Currently, he is visiting Professor at William and Mary Law School. Professor Billings's most recent work is entitled *Magistrates and Pioneers: Essays in the History of American Law*. Today, Professor Billings will speak on the history of the Louisiana Supreme Court.

#### **PROFESSOR WARREN M. BILLINGS, Ph.D.**

Thank you Governor, and thank you all for inviting me. As I was listening to my colleagues talk, my mind ran back to two events in the history of this Court. One was exactly a hundred years ago, when the Court

celebrated its centennial of its founding. What I was reminded of about that is the principal address was delivered by Henry Plauche Dart, somebody whose name is probably known to some of you. Dart's address was about 75 pages long, which meant that he probably talked for 3 hours. I don't intend to talk for 3 hours, y'all would shoot me. The other episode that I was thinking about was when the Court





met for the very first time, there were only two judges, Dominick Hall and George Mathews. They constituted a quorum because there were only three judges on the Supreme Court at that point. There was very little ceremony that we know of and they convened in the Government House. I doubt very seriously that they were piped in by military guard, there was no pledge. In fact, the meeting didn't last very long at all. All that it amounted to was the commissioning, the reading out of the commissions qualifying Hall and Mathews to be members of the Court. Because Hall's was read first, he became the senior judge and that established the precedent of the senior judge being the presiding judge. He wasn't called Chief Justice until 1845.

Now these guys didn't have a very good idea of what they were about. The Supreme Court had been created by constitutional amendment, as Professor Trahan had mentioned, as a condition of statehood. The state supreme courts in the early part of the 19th Century were not very clear about what they were supposed to do. The whole invention of the Supreme Court was something that came out of our revolution. And it is one of the reasons -- because courts didn't have very much to do, - it's one of the reasons why supreme courts all across the nation got control of qualifying who became members of the Bar. And until the 20th Century it was the justices of the supreme courts of several states who actually quizzed prospective candidates, and that became a pressing issue in this Court. It practically overwhelmed the Court in the 1840s and led to the Court's involvement in some reforms to legal education and also control over the Bar.

The other thing I was thinking about as I listened to my colleagues talk is we know more about the Supreme Court of Louisiana today than at any time in the past, and yet we know very little about it. I was painfully aware of this after Justice Guidry talked me into writing the booklet that will be out in the fall I guess, which is a sort of a sketch for the history of the Court from its beginning to

the swearing in of Chief Justice Johnson. There are whole areas of the history of this Court that await further explanation. My one hope about that booklet is that it may inspire some young, eager scholar to pick up and do more about the history of the Court. Among the things of interest that I would have liked to have spent more time talking about in that booklet, but just didn't because there's no basic research and I didn't have time to do it because it would have taken a year to do, was how the Court's involvement with criminal law proceeded from the time the Court received jurisdiction in 1845 to the present.

This Court has had an enormously important role in shaping that whole business, but it's still largely mysterious. I also would like to have known more about something that Professor Trahan had talked about and that was the creation of the Louisiana Law Institute. There's a real story there that somebody who is interested in how institutions of that sort begin and the influence and impact that they have on rising lawyers, judges and whatnot. That gives one an insight into how and why the civilian tradition was preserved and revived.

Something else that interested me and still does, and again I hope somebody someday will take on this challenge, is how over time women became involved in the law, and not those who necessarily wound up as lawyers and judges, although that's a significant part of it. Throughout the history of the Court women went to law from time to time. I know of a wonderful case that was brought in Shreveport in the 1890s involving a woman named Fannie Roos. Fannie Roos kept a bawdy house and she was brought up on charges that her women were too loose on a parade day and she went to court and lost the case ultimately, but it's an example of the kinds of things that this Court over 200 years had been involved in, in some way, shape or form.

Raphael Cassimere mentioned the case of Josephine Decuir, who was a woman of color who went to court to protect her rights of public



1. *Riding the circuit, the Louisiana Supreme Court holding court at Northwestern State University in Natchitoches, Louisiana (October 18, 2012)*
2. *Justices and judges attending Red Mass in Natchitoches, Louisiana (October 19, 2012)*
3. *Oral argument in the Sala Capitular of the Cabildo, a former home of the Louisiana Supreme Court (May 7, 2012)*
4. *The Louisiana State Museum Cabildo exterior*
5. *The Lusher High School Jazz Band perform at the Bicentennial Celebration reception in the Supreme Court courthouse lobby (March 1, 2013)*

accommodation. But then when you get into the more recent times since the end of World War II, when women began to go to law school and I guess now women probably make up, don't they, probably about half of the Bar. What impact, we need some studies in terms of how has that, if it has in fact, had any real impact on the nature of the law and practice in this state. Now I can go on and on, I am not going to do that because my time is short. But the one thing that I do wish to make note of is a lot of the work that has been done so far would not have been possible but for the fact that the Court and the University of New Orleans struck the arrangement back in the 1970s to make us the depository and it opened up a lot of research.

Now the point I want to make here is I think we need to be concerned about the preservation of legal documentation now and in the future. I mean everybody gets very excited about saving records when they are 200 years old. There is a great possibility of significant loss of records from the 20th Century, in our own time. One of the real concerns that I have now since we have gone into the direction of electronic, you know the digital world, is the preservation of digital legal information. It's very ephemeral and it can be lost very quickly. Since people don't write letters and keep papers in the same way that we ought to, I think it would be a wonderful thing in times to come for somebody to take on the task of doing interviews with past and present judges. I regret the fact that some of the people in this Court died before anybody got the chance to sit down with them with a tape recorder and get them to talk about how they got to be – all sorts of things about that sort of thing. These are some of the concerns that I have. I hope that maybe over 100 years from now, the next person who gets up to talk about the history of the Court can say we have been able to bring the history of this Court into a much better understanding than what it was when that old gas-bag Warren Billings talked about it a hundred years earlier.

I would like finally just to conclude if I may on a personal note. I thank the Court for gracing me as Bicentennial Court Historian. That was very nice. I am not sure it was well-deserved, but I will accept it. The other thing I would like to say is because of

the relationship that I have had with this Court as a consultant, as well as being involved with preserving the records, I got to know a lot of interesting people. I had a hell of a lot of fun working with this Court and learning. This is a fascinating institution. It covers the good, bad and the ugly about the history of this state.

It has been graced since 1813 with rapsallions, dolts, good grey journeymen and some of the sharpest legal minds anywhere in the United States; and to have had some hand in bringing a greater awareness of what this Court has done over the past 200 years, as I say it was one hell of a ride and I thank you all. (Applause)

**LT. GOVERNOR DARDENNE:**

Thank you Professor Billings and we thank you for not characterizing any of the justices as you have identified those categories. And thanks again to these legal scholars who have enriched so much of today's commemoration of the Bicentennial of the Louisiana Supreme Court.

And now, we have a special presentation that will be both educational and enjoyable. The students of the International High School of New Orleans will present a short skit, entitled: "An Uncommon Birth: Shaping Louisiana's Legal Tradition for Statehood." Thanks to attorneys Mary Dumestre, Barry Ashe and Jeff Derouen for working with the students on this delightful skit.

(15 Minute Skit, by the International High School of New Orleans, mostly in French)

**LT. GOVERNOR DARDENNE:**

Thank you, gracias and merci beaucoup. This is really the golden decade of the history of Louisiana. Last year we celebrated the bicentennial of statehood. This year we celebrate the bicentennial of the Louisiana Supreme Court. Throughout the next several years we commemorate the Civil War and its impact on Louisiana. We'll celebrate the Battle of New Orleans in 2015, its 200th anniversary. Natchitoches, the first community in Louisiana in 2014 celebrates its tri-centennial, followed by New Orleans in 2018, its tri-centennial. It's a great year for Louisiana to reflect on its history and we have certainly done so today.

We hope you have enjoyed this ceremony, and have learned a great deal about the rich history of the last 200 years of the Louisiana Supreme Court. Two housekeeping matters — please be sure to complete the form giving us your contact information so that we may send you a copy of the commemorative booklet that will be prepared in the near future. You can leave your form on the table as you exit the courtroom. Also, if you would like to earn CLE credit, please also fill out the appropriate form and leave it on the table as you exit.

On behalf of the Justices of the Court, we would like to thank all of our program participants and all of the authors of articles to be featured in an upcoming issue of the *Louisiana Bar Journal*.

The Justices would also like to thank the Louisiana Supreme Court Historical Society for sponsoring our reception today, and especially the judges would like to thank you for joining us today on this auspicious occasion, as well

as all of the jurists who have come before them and served on this Honorable Court and who were the cornerstone of Louisiana's great legal system of justice.

Following the singing of the National Anthem by Associate Justice Jeannette Theriot Knoll, please join us for a reception on the first floor. And if all of the retired justices would please remain in the Court for just a moment so we can take a photograph. Justice Knoll.

(Associate Justice Jeannette Theriot Knoll sings National Anthem)

**CHIEF JUSTICE JOHNSON:**

Bailiff, please adjourn the Court.

**COURT BAILIFF:**

All rise.

***End of Ceremony***



1813 / 2013

# The Supreme Court of Louisiana at 200

*By Dr. Warren M. Billings*

Founded in 1813, the Supreme Court of Louisiana has fashioned and ornamented state law ever since. Its 200th anniversary bids revisiting how it hammered out a regime quite distinct from those in other states and yet very much a part of the federal system that is the American legal order. This essay is such a recollection.

In its original guise, the Court barely resembled the one familiar to us. Conceived as part of an American-style judiciary, it got written into the Constitution of 1812 as a political necessity that assured Louisiana's admission to the Union. None of its architects quite grasped its purposes or its possibilities. Some perceived it as a threat to their legal ways, which sprang from the laws of Spain and France, whereas others saw it as a likely device for melding those traditions with American law into a serviceable system for the new state. This lack of common understanding resulted in the sparest of frameworks for the high court in the new Constitution.<sup>1</sup> Up to five judges composed that court. As gubernatorial appointees, they kept their seats for life but could be impeached. Their jurisdiction extended to civil disputes that exceeded \$300, and they rode circuit throughout two statewide appellate districts.

The Judiciary Act of 1813 added flesh to these bones, but only just. It set the size of the bench at three judges, any two of whom made a quorum. It specified being "learned in the law" as the sole criterion for office and assigned the judges precedence according to the dates of their commissions. Finally, it invested the Court with rulemaking authority and power over the lower courts and the bar. So long as the judges did not stray beyond these limits, they were free to conduct themselves as they saw fit.<sup>2</sup>

With little fanfare, the Court sat for the first time on March 1, 1813, at Government House,<sup>3</sup> in New Orleans. Two of its newly minted

judges, Dominick Augustin Hall and George Mathews, showed up. After a public reading of their commissions from Gov. William C.C. Claiborne and swearing the oath of office, they adjourned. The third judge, Pierre Augustin Bourguignon Derbigny,<sup>4</sup> joined them a week later.<sup>5</sup> Hall, by virtue of being commissioned first, became presiding judge. He resigned before the year was out, whereupon Mathews became president and stayed until he died in 1836. Derbigny left in 1820 for an unsuccessful bid for governor, by which time François-Xavier Martin had joined the Court. Martin remained for 31 years and took the center seat after Mathews's death.

The Court went about adjudicating a swelling volume of business that grew after 1813, and, as it did, it formed the foundations of Louisiana's legal system. Initially, the Court designed rules for bar admissions, which qualified newcomers as well as lawyers who practiced before Louisiana was a state.<sup>6</sup> Its subsequent regulations established standards of legal education that lasted until the 1920s.<sup>7</sup> Early on, the judges also narrowed their jurisdiction by deciding they lacked constitutional warrants to receive cases from the defunct territorial Superior Court or to hear criminal appeals.<sup>8</sup> Similar questions of jurisdiction touched the greater matter of mixing American and civilian legal precepts into a steady, reliable legal order. Mathews and Martin, both trained American lawyers, likened civil and common law to complementary facets of the same legal gemstone instead of rivals. For that reason, they acknowledged civilian tenets as the pith of private law in Louisiana but looked to other sources as well.

Moreover, both prided an independent judiciary, so they resisted being exclusively bound by the Civil Code of 1825. They went so far as to ignore post-1825 repealing statutes that invalidated all foreign law in force at the time of the Purchase,

the *Digest* of 1808, and every territorial or state act that had been revised by the Civil Code, which clouded an already muddled situation. Martin finally clarified the muddle in 1839 when, in the case of *Reynolds v. Swain*,<sup>9</sup> he asserted the Court's right to say what was law in Louisiana, and who ultimately declared it. His decision, the Louisiana equivalent of *Marbury v. Madison*, strengthened the Court with an Anglo-American tincture, and it guaranteed that the blending of American, British, French, Roman and Spanish law would continue. That Mathews and Martin wielded such sway says as much about their longevity as their outlook. Younger colleagues — most notably Alexander Porter, Henry Adams Bullard, George Strawbridge and George Eustis — held similar views, but their time on the high bench was far shorter and therefore less influential than it otherwise might have been.

Poor health dogged Mathews, Martin went blind, and both stubbornly resisted efforts to improve the Court's efficiency. By the 1840s, a combination of a mountainous backlog of unresolved appeals, pressure to take criminal appeals, and a scandal involving Judge Rice Garland contributed mightily to a statewide outcry that spawned the Constitution of 1845 and a reformed Supreme Court. Gone was the old one, replaced by a chief justice and three associate justices who served eight-year terms. These justices still rode circuit and retained supervisory powers, but their jurisdiction extended to both civil and criminal appeals. George Eustis returned to the Court as its first chief justice. He oversaw the clearing of the caseload and instituted a thorough reorganization of procedures. The Constitution of 1852 included no substantive jurisdictional changes; however, it reduced unlimited oral arguments to a total of four hours, it erected an elective judiciary, it raised the number of justices from four to five, and it lengthened their terms from eight years to 10.<sup>10</sup>

Civil war and its aftermath wrought a Supreme Court of a different sort. After New Orleans fell to Union troops in April 1862, Chief Justice Edwin T. Merrick decamped for Opelousas

and then to Shreveport, but the Confederate court did little business that we know of. It lost its archives to federal soldiers who carted them off to Washington, D.C., where they remained in the custody of the War Department until the 1880s.<sup>11</sup> The return of white home rule, the coming of Jim Crow, and more structural modifications characterized the Supreme Court of the post-Reconstruction years. Constitutional revisions in 1864 and 1868 abolished slavery and promised civil rights for black Louisianans. The Court, led by its first native-born Chief Justice John T. Ludeling, re-bounded its jurisprudence accordingly. Not everyone greeted its alterations kindly, most certainly not white attorneys who fiercely abominated Ludeling's rulings on "racial and public questions," even though the Court's opinions encouraged rising racial animosities.<sup>12</sup>

After 1877, the Court usually sided with white supremacists in the Legislature, most notably when it validated the doctrine of "separate but equal" treatment of black Louisianans, a rule that became the law of the land after 1896 when it received the imprimatur of the Supreme Court of the United States in *Plessy v. Ferguson*.<sup>13</sup>

A new Constitution, promulgated in 1879, recreated an appointive court, with the governor naming the chief and picking all five justices from four judicial districts. (Two seats went to Orleans and its surrounding parishes.) Then, too, the Constitution eased the Court's caseload by adding two intermediate benches to hear civil appeals involving less than \$2,000. Provisions in the Constitution of 1898 retained the appointive judiciary but dictated that the office of chief justice would henceforth be based on seniority of service. (A 1904 constitutional amendment also restored the right of electing the Court to the voters.) Two other modifications relieved the justices from riding circuit and designated New Orleans as the Court's sole seat. The latter stipulation galvanized a lengthy campaign to build the Court a permanent home that culminated in 1910 with the opening of the massive



Beaux Arts-style courthouse at 400 Royal Street in the heart of the French Quarter.<sup>14</sup>

Three years later, the Court celebrated its centennial. Speakers — some brief, some not — treated an enthusiastic audience to addresses that touched upon aspects of the Court's first 100 years. In response, Chief Justice Joseph A. Breaux exclaimed that, in Louisiana, "two systems of law, civil and common, were blended." As a result, he continued, "the labors of the bench and bar of that period are still felt. Although a century has passed, during all these years, these united systems of laws, civil and common, have come down to us with the impress placed upon them in the early years of the century."<sup>15</sup>

After 1913, Breaux's successors faced the challenge of fitting his "united system of laws" to suit the consequences of tumultuous changes in the economy, politics and the social fabric that epitomized 20th-century Louisiana. Three chief justices — Charles A. O'Niell, John B. Fournet and Pascal F. Calogero, Jr. — stand out because their combined tenure amounted to two-thirds of a century of service. Incumbent for 27 years, O'Niell arguably presided over the most partisan Court before or since. He earned plaudits for the incisive beauty of his opinions but had little taste for court reform, calls for which had grown louder by the 1920s. His hostility kept a top-to-bottom reorganization of the entire judiciary out of the Constitution of 1921, though he did agree to increasing the size of the Court to seven in the expectation that more justices equated with greater efficiency, which proved a vain hope. Later efforts at modernization met with his studied resistance, especially after he presided at the impeachment trial of Gov. Huey P. Long in 1929. O'Niell devoutly loathed everything about the Kingfish, so he regarded modernization as little more than a lightly veiled attack upon him. He was not wholly wrong given that modernization's most persistent advocate was fellow Justice John B. Fournet, a ferocious Long partisan who went to the Court after his highly controversial election in 1934.<sup>16</sup>

Fournet made little headway so long as O'Niell stayed, but he did persuade the Legislature in 1938 to fund the hiring of law clerks as a means of speeding up the production of opinions, and

that was a first for the Court. Behind the scenes, Fournet actively worked with Gov. Earl K. Long to pass a statute requiring judges to retire at age 75, allowing him to succeed O'Niell in 1949.<sup>17</sup> As chief, he relied upon the justices' rulemaking power and deft political maneuvering to revolutionize the Court's relationship to the judiciary as a whole. In the 1950s, he invented the Judicial Council and created a judicial administrator whose staff supplied him with detailed data on the courts that he used when he lobbied the Legislature to streamline the appellate system and to add more judgeships in the lower courts. Tidying up the Supreme Court docket, he also secured appropriations for a new courthouse that sat at 301 Loyola Ave. in New Orleans. Consequently, when he left in 1970, "the Court" signified more than justices who ruled on cases. By his hand, the bench turned into a potent entity and collection of related agencies that supervised every phase of the entire judicial branch and made the chief justice the system's premier administrative traffic cop. Put another way, Fournet convinced lawyers, legislators and voters that better administration at every level resulted in the speedier, more honest and equitable dispensation of justice, while infusing the Court with a marked willingness to experiment with new ways of improving its expanded responsibilities.

That penchant for experimentation gained national recognition for the Court, and innovation was commonplace throughout the 1970s and 1980s. No one among the justices thought it should be otherwise because as one noted, "[Our] system of justice is never finished. It must be conditioned and improved." Chief Justice Calogero clearly shared this view.<sup>18</sup>

Calogero, who came to the Court in 1973, moved to the center chair 17 years later and gave it up in 2008. A committed reformer, as chief he oversaw creation of the Louisiana Indigent Defender Board, regular strategic planning across the judiciary, reforms to the juvenile court system, and a community relations department, among other improvements. His most visible accomplishment was bringing off the renovation of the Royal Street courthouse that allowed the Court and its departments to return to their former home in 2004. There were dramatic changes in the composition of

the Court on his watch as well.

In 1992, the Court got its first female member after voters elected Catherine D. Kimball to a seat. The next year, as a result of a federal consent decree, the late Revius O. Ortique, Jr. became the first African-American justice, and, upon his retirement, Justice Bernette Joshua Johnson became the first African-American woman to be elected. Justice Jeannette Theriot Knoll joined the Court in 1997, so the bench then consisted of three women and four men. When Justice Kimball succeeded Calogero in 2009, she became the first female chief justice of Louisiana; she retired in January 2013. Justice Bernette Joshua Johnson was sworn in as the new chief justice on Feb. 1, 2013, becoming the Court's first African-American chief justice.

In 1813, no one knew what the future of the Supreme Court held. For certain, no one could have imagined how, from that day to this, its jurists would stamp deep impressions upon the law and make the Court into the linchpin of the judicial branch. At most, they likely expected an institution they did not understand completely to forge a workable legal system. By twists and turns, hope translated into reality over the course of two centuries. In the words of Chief Justice Kimball, "[The] work of the Court to make our vision of an efficient, fair, and timely judiciary a reality" continues.<sup>19</sup>

*This article is excerpted from a longer version published in conjunction with the Court's celebration of its bicentennial in March 2013. The author thanks Justice Greg G. Guidry for encouraging him to write the article. For their assistance, thanks are due to the Court's law librarians Georgia Chadwick, Miriam D. Childs, Tara C. Lombardi, Marie Erickson and Katherine B. Nachod; to the library's summer intern and Tulane law student Emily Wojna; and to Sybil A. Boudreaux and Florence M. Jumonville, librarians at the Department of Louisiana and Special Collections at the University of New Orleans.*

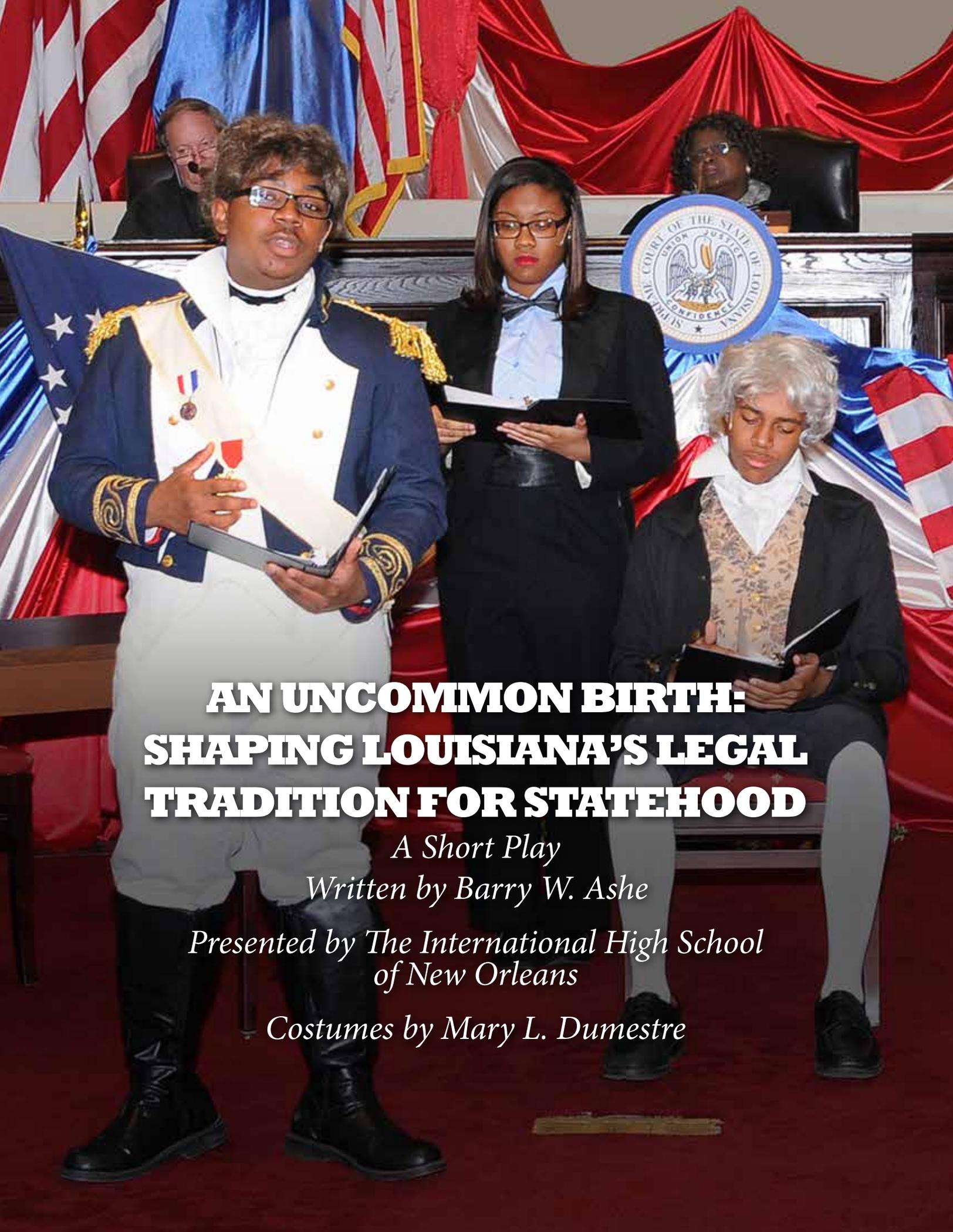


## FOOTNOTES

1. *In Search of Fundamental Law: Louisiana's Constitutions, 1814-1974*, at 6-21 and 155-58 (Warren M. Billings and Edward F. Hass, eds., 1993).
  2. La. Const. of 1812, art. IV, § 18 (1813).
  3. Located at Toulouse and Levee Streets, Government House was the first state capitol building. It housed the Office of the Governor, the Legislature and the Supreme Court but was abandoned in 1827 for more commodious accommodations.
  4. Because the state Senate and Gov. Claiborne were at odds over Derbigny's nomination, the senators held up his confirmation until March 8.
  5. Sybil A. Boudreaux, ed., *The First Minute Book of the Supreme Court of the State of Louisiana, 1813 to May 1818: An Annotated Edition*, 13-15 and 20-21. (1983) (unpublished M.A. thesis, University of New Orleans) (on file with the Law Library of Louisiana).
  6. *The Historic Rules of the Supreme Court of Louisiana, 1813-1879*, at 1-2 (Warren M. Billings, ed., 1985).
  7. Warren M. Billings and Mark F. Fernandez, *A Law Unto Itself?: Essays in the New Louisiana Legal History*, 25-40 (2001); Warren M. Billings, *Magistrates and Pioneers: Essays in the History of American Law*, 301-303 (2011).
  8. *Bermudez v. Ibanez*, 3 Mart. (o.s.) 2 (1813); *Laverty v. Duplessis*, 3 Mart. (o.s.) 52 (1813).
  9. *Reynolds v. Swain*, 13 La. 193 (1839).
  10. Mark F. Fernandez, *From Chaos to Continuity: The Evolutions of Louisiana's Judicial System, 1712-1862*, at 89-109 (2001).
  11. All the captured records bear a War Department identification mark stamped in blue ink. Edward Douglass White, who served on the Court from 1879-80, secured their return.
  12. Henry Plauché Dart, "The History of the Supreme Court of Louisiana," 133 La. liii (1913).
  13. *Ex Parte Plessy*, 45 La. Ann. 80 (1892); *Plessy v. Ferguson*, 163 U.S. 537 (1896).
  14. Carol D. Billings and Janice K. Shull, *The Louisiana Supreme Court: An Historical Guide*, 10-12 (2004).
  15. The text of Breaux's remarks forms part of the entire record of the ceremonies that appears in Volume 133 of the Louisiana Reports.
  16. Billings *supra* note 7, at 371-99. As I learned when I interviewed him in the 1970s, the advance of years did absolutely nothing to change his mind.
  17. John B. Fournet, "The Reorganization of the Louisiana Judicial System," 17 Sw. L.J. at 78-85 (1963).
  18. Joe B. Sanders *quoted* in Billings and Shull, *supra* note 14, at 78.
  19. C.J. Catherine D. Kimball, "Message from the Chief Justice," Ann. Rep. Jud. Council Sup. Ct. La. 1 (2011).
- Dr. Warren M. Billings, Bicentennial Court Historian of the Louisiana Supreme Court, was also historian of the Louisiana Supreme Court from 1982-2005. He is a Distinguished Professor of History at the University of New Orleans and Visiting Professor of Law at the College of William and Mary Law School in Williamsburg, Virginia.*

*This article was reprinted with permission of the Louisiana Bar Journal. It was originally printed in its entirety in the Louisiana Bar Journal v.60 no.6 (April/May 2013).*

1813 / 2013



**AN UNCOMMON BIRTH:  
SHAPING LOUISIANA'S LEGAL  
TRADITION FOR STATEHOOD**

*A Short Play*

*Written by Barry W. Ashe*

*Presented by The International High School  
of New Orleans*

*Costumes by Mary L. Dumestre*

\*\*\*\*\*

*Cast of Characters*

**NARRATOR** – *Therese Tate*  
*Female, dressed in black.*

**JEFFERSON** – *Ruben Dunn*  
*Male, long red hair drawn back, dressed in early 19th century garb (green jacket, gold breeches, knee socks).*

**CLAIBORNE** – *Markus Reneau*  
*Male, dressed in colonial military uniform with blue coat.*

**CASA CALVO** – *Beatriz Polanco*  
*Male, dressed in colonial governor's coat. Fluent in Spanish.*

**TRANSLATOR ONE** – *Anastasia Woods*  
*Female, dressed in black.*

**POYDRAS** – *Dewey Sampson*  
*Male, dressed in early 19th century planter garb. Fluent in French.*

**TRANSLATOR TWO** –  
*Autumn White*  
*Female, dressed in black.*

**LIVINGSTON** – *Lauren Brown*  
*Male, dressed in black or brown 19th century garb.*

\*\*\*\*\*

(The scene involves a Narrator, center stage, who is lit as the play begins. Five other characters are on stage, four to the left of the narrator, with a writing desk, and one (Jefferson) to the right, also with a writing desk, all with heads down and unlit. Each occupies his own space.)

**NARRATOR:**

The decade before the dawn of statehood for Louisiana was pivotal in shaping Louisiana's laws for both its state and federal courts. With the Louisiana Purchase in 1803 there began a clash of legal traditions in what was then, as now, the

multicultural world of the Louisiana territory and its thriving port city of New Orleans. The French had long settled the area, the Spanish had ruled it for over three decades, and the restless Americans were moving in as a result of their westward expansion.

The clash of legal traditions is symbolized by several leading figures of the day, so some introductions are in order.

(Each character lifts his head and nods to the audience as introduced.)

This man we all know. Thomas Jefferson, the President who, with the Louisiana Purchase, presided over the largest acquisition of territory by the United States in its history. Here he sits in Washington, D.C., the young nation's capital, steering the effort to make Louisiana ready for statehood.

This man we should know. William C.C. Claiborne, President Jefferson's designee, on the scene in Louisiana, to accomplish Jefferson's plans to ready Louisiana for statehood. Claiborne was the first American territorial governor of Louisiana and then its first governor after statehood.

Then there were persons born in Louisiana, largely but not exclusively French, who everyone down here knew as Creoles, the "ancients" or the "old inhabitants." Symbolized here by Julien Poydras, they were afraid that the Americans were bound and determined to turn their world upside down – changing all things French to all things American. Having retained their French cultural roots through over three decades of Spanish rule, the Creoles were not about to let the Americans have their way. Still, Poydras was an old inhabitant who was largely pro-American during the period of transition to statehood.

And this is the forgotten man in the days following the Purchase and the run up to statehood – the



1813 / 2013

Marquis de Casa Calvo, the former Spanish commissioner in New Orleans, who is emblematic of the last vestige of Spanish rule and an ominous reminder of Spanish pretensions to Louisiana. Spain's lasting influence on Louisiana and its law may be greater than either the Creoles or the Americans will ever want to acknowledge.

This is Edward Livingston, a New York lawyer who came to New Orleans after the Purchase in search of professional and business opportunities. The Creoles were at first suspicious of the American opportunist, but he eventually became Louisiana's foremost champion of legal codification and a draftsman of Louisiana's revised Civil Code in 1825.

Let's listen in to their enduring exchange, which here occurs in the early part of 1809.

(With these last words, the Narrator extends his right arm with open palm and exits stage left in a sweeping movement, but always facing the audience.)

**CASA CALVO:**

(Lifting his head and speaking to the audience in Spanish.)

[Spoken in Spanish: I am disheartened to see what Louisiana has become in so short a time after my government foolishly returned her to Napoleon, and I fear what she will become now that the French pretender has sold her to the upstart Americans.

And all this after the Spanish empire had taken pains to establish the civil law and jurisprudence of Spain – the law of Castile – as the authoritative source of law for Louisiana.]

**TRANSLATOR ONE:**

(Holding placard or banner saying, "Translation.") I am disheartened to see what Louisiana has become in so short a time after my government foolishly returned her to Napoleon, and I fear what she will become now that the French pretender has sold her to the upstart Americans.

And all this after the Spanish empire had taken pains to establish the civil law and jurisprudence

of Spain – the law of Castile – as the authoritative source of law for Louisiana.

**CLAIBORNE:**

(Lifting his head, facing toward and speaking to Casa Calvo.)

The influence and role of Spain's civil law have never been questioned by me or the judges of the Superior Court of the Orleans territory.

**POYDRAS:**

(Lifting his head and speaking to Claiborne in French.)

[Spoken in French: American imperialist – that's just the problem. You forget that the people of Louisiana are French. Your weakness and cowardice make you buckle to Spanish laws, as you choose to ignore the fact that Louisiana was founded upon the French civilian legal tradition. And all the while, don't believe for a moment that we Creoles don't know what you're really up to, Governor Claiborne – seeking to displace all civilian law with the English common law that prevails everywhere else in America. This could adversely affect our system of community property, our inheritance laws, our family law, our law of obligations and property, our method of making legal decisions. And don't forget the organized protest against American rule in 1804 objecting to the Americanization of Louisiana law. Just leave our law alone, and we will be able to make the change to American statehood!]

**TRANSLATOR TWO:**

(Holding placard or banner saying, "Translation.") American imperialist – that's just the problem.

You forget that the people of Louisiana are French. Your weakness and cowardice make you buckle to Spanish laws, as you choose to ignore the fact that Louisiana was founded upon the French civilian legal tradition. And all the while, don't believe for a moment that we Creoles don't know what you're really up to, Governor Claiborne – seeking to displace all civilian law with the English common law that prevails everywhere else in America. This could adversely affect our system of community property, our inheritance laws, our family law, our law of obligations and property, our method of making legal decisions. And don't forget the

organized protest against American rule in 1804 objecting to the Americanization of Louisiana law. Just leave our law alone, and we will be able to make the change to American statehood!

**POYDRAS:**

(Turning toward Casa Calvo in French.)  
[Spoken in French: And, Marquis, you seem to ignore the fact that lower Louisiana is overwhelmingly French in language, moeurs, manners and, yes, even legal expectations, and it remained that way throughout the period of Spanish rule.]

**TRANSLATOR TWO:**

(Holding placard or banner saying, "Translation.")  
And, Marquis, you seem to ignore the fact that lower Louisiana is overwhelmingly French in language, customs, manners and, yes, even legal expectations, and it remained that way throughout the period of Spanish rule.

**LIVINGSTON:**

(Lifting his head, pointing to himself and speaking to the audience.)  
That's what this transplanted New Yorker observed upon my arrival in Louisiana after the Great Purchase. Even after 35 years of Spanish rule, the population of Louisiana is still generally French in its tastes, customs, habits, religion, and language.

**CLAIBORNE:**

(Picking up his quill pen and sitting at a writing desk.)  
"President Jefferson: I urge that the government in Louisiana be as republican as the people can be safely entrusted with. I fear, however, that the principles of a popular Government are utterly beyond their comprehension. The system of representative government is an enigma that at present bewilders them."

**POYDRAS:**

(Turning to Claiborne in French.)

[Spoken in French: We have learned of your insulting correspondence with the President and the way you talk of Louisiana as some sort of Tower of Babel, suffering from the confusion of tongues, and Louisianians as a people stupefied by despotism or ignorance, and therefore unable to elevate themselves for a long time to the heights of a free constitution. Governor Claiborne, it is you and your English-speaking friends who are the strangers here. You must begin to take that into account.]

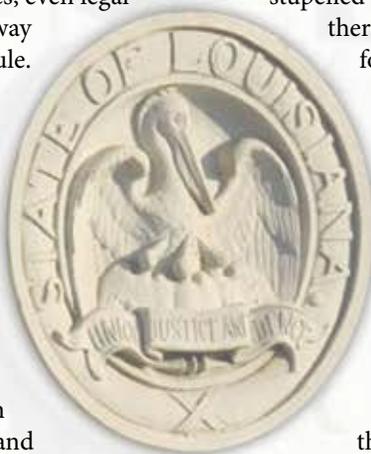
**TRANSLATOR TWO:**

(Holding up placard or banner saying, "Translation.")  
We have learned of your insulting correspondence with the President and the way you talk of Louisiana as some sort of Tower of Babel, suffering from the confusion of tongues, and Louisianians as a people stupefied by despotism or ignorance, and therefore unable to elevate themselves for a long time to the heights of a free constitution. Governor Claiborne, it is you and your English-speaking friends who are the strangers here. You must begin to take that into account.

**JEFFERSON:**

(Lifting his head, and then sitting at a writing desk and picking up a quill pen.)  
"Governor Claiborne: Louisiana – the American rage is for going to that country. Accordingly, the United States must do what it can to make Louisiana ready to receive more American settlers and to make Louisiana ready for statehood. That is why Congress passed the first organic law establishing a territorial government, including a rudimentary judicial system. But a majority in the Government should be Americans, and the rest French or Spaniards. And I agree with you, Governor, that Louisiana is not ready for immediate statehood.

"Anglo-American common law is familiar to and thus will attract even more American settlers to Louisiana, and Anglo-American common law is the foundation of American independence. We need the



common law in Louisiana in order to bind it more closely to the still fragile union of American states.

“After all, legal uniformity is necessary to national unity. For however I admit the superiority of the civil law over the common law code, as a system of perfect justice, yet an incorporation of the two would be like Nebuchadnezzar’s image of metal and clay, a thing without cohesion of parts.

“Instead, we shall endeavor to introduce the American laws in Louisiana and that cannot be done but by amalgamating the Louisiana people with such a body of Americans as may take the lead in legislation and government. We shall draw Louisiana’s laws and organization to the mold of ours by degrees as the people of Louisiana find practicable without exciting too much discomfort.”

**POYDRAS:**

[Spoken in French: The Anglo-American common law – a spurious monster, the mongrel offspring of injustice and chicane, has been introduced into my country – Louisiana – by our usurpers, who endeavor to pawn it on us as the lovely child of truth and justice; but we have with horror reject this hideous imp, this illegitimate monster. Its foster parents are now attempting to have him regenerated, and legitimated, and for this purpose they pursue means which are new, circuitous and dark; but I ardently hope their schemes may once more prove abortive.

We are on the eve of seeing confusion established on the banks of the Mississippi, by the forced introduction of a voluminous body of common law to which we are total strangers; laws which are quite foreign to our constitution, our liberty, our circumstances and our manners, and are wholly unknown and inapplicable to us.]

**TRANSLATOR TWO:**

The Anglo-American common law – a spurious monster, the mongrel offspring of injustice and chicane, has been introduced into my country – Louisiana – by our usurpers, who endeavor to pawn it on us as the lovely child of truth and justice; but we have with horror reject this hideous

imp, this illegitimate monster. Its foster parents are now attempting to have him regenerated, and legitimated, and for this purpose they pursue means which are new, circuitous and dark; but I ardently hope their schemes may once more prove abortive. We are on the eve of seeing confusion established on the banks of the Mississippi, by the forced introduction of a voluminous body of common law to which we are total strangers; laws which are quite foreign to our constitution, our liberty, our circumstances and our manners, and are wholly unknown and inapplicable to us.

**LIVINGSTON:**

(Sitting at a writing desk, and picking up a quill pen.)

“Dear brother Robert: Have you and your friend, Robert Fulton, made any progress on your silly invention? A ship powered by steam – unthinkable. I write to advise you on the state of legal affairs in the land for which you helped negotiate the Purchase. Louisiana is in a kind of equivocal state as to jurisprudence that produces the most comic effect. French law abrogated by Spanish law, only to be restored shortly before being displaced by the laws of the United States. Our Governor conceives himself authorized to legislate a mixture of the laws of Castille, the Customs of Paris, the Statutes of the United States and the omnipresent common law of England. This confusion is equaled only by the cacophony in our local courts where American attorneys, French procurers and Castilian abogados each argue in his own language.

“Of course the lawyer who would know the greatest number of Judges speaking his language would always be the one who would win. You would have about as much chance by rolling dice as you would with such courts? If such a legal case was shown on the stage, the chances are you might die laughing at such a novel burlesque invention, but a man’s heart grows sad and revolts, when he thinks that it is to the judgments of such Courts that the fortune and honor of old Louisiana families are entrusted! I hope one day to bring order to such chaos.”

**CLAIBORNE:**

(With a stricken look and hands to his head.)

I don't get paid enough for this – stuck in the middle between a stubborn and determined President and an even more stubborn and suspicious people of Louisiana, clinging to their passing culture and resisting their American destiny. So Louisianians condemn me for introducing the common law, and the Americans condemn me for delaying its introduction. Louisianians believe the American regime is bent on overturning the legal basis of the Louisiana way of life. And who knows? They may be right. At least this conflict is not quite as trivial as when the French and Americans argued about whose dances would be played first at the New Orleans balls.

I pay too great a price. I've lost two wives and a daughter to the yellow fever that plagues this swamp, and now my career is jeopardized by a conflict I can't find a way to resolve. But, alas, the approval of the President is the first object of my ambition, the most anxious wish of my heart. And the second object is to steer a middle course between the French and the American population.

(Sitting at a writing desk, and picking up a quill pen.)

“President Jefferson: The council has already determined that the laws should be printed in French and English. The laws are to be passed in English, but official translations into French are to be made. I presume this will be satisfactory.”

**POYDRAS:**

[Spoken in French: You are kidding yourself, Governor Claiborne, if you think these will be American laws. After all, in 1808, Louisiana saw fit to adopt its first civil code, the *Digest of the Civil Laws Now in Force in the Territory of Orleans*. This took place on your watch, with your approval, and the French version is mostly lifted verbatim or nearly verbatim from the new system of laws in France – the *Code Civil* of Napoleon.]

**TRANSLATOR TWO:**

You are kidding yourself, Governor Claiborne, if you think these will be American laws. After all, in 1808, Louisiana saw fit to adopt its first civil code, the *Digest of the Civil Laws Now in Force in the Territory of Orleans*. This took place on your watch, with your approval, and the French version is mostly lifted verbatim or nearly verbatim from the new system of laws in France – the *Code Civil* of Napoleon.

**CASA CALVO:**

[Spoken in Spanish: Not so fast Señor Poydras. *The Louisiana Digest* was essentially a *digest* of the Spanish law then in force.]

**TRANSLATOR ONE:**

Not so fast Señor Poydras. *The Louisiana Digest* was essentially a *digest* of the Spanish law then in force.

**POYDRAS:**

[Spoken in French: Au contraire ... The *Digest* represented a resurgence of French law in Louisiana, harkening all the way back to the tradition of the French civilian code, the *Custom of Paris*, that has governed here since 1712.]

**TRANSLATOR TWO:**

Au contraire ... The *Digest* represented a resurgence of French law in Louisiana, harkening all the way back to the tradition of the French civilian code, the *Custom of Paris*, that has governed here since 1712.

**CLAIBORNE:**

(Speaking to the audience.)  
The *Digest* is nothing more than a compilation of laws in force in this territory; it was not a new legal code intended to replace prior law. Louisiana has not broken with its past.

**LIVINGSTON:**

(Also speaking to the audience.)  
And yet it is a matter of public notoriety that our local *Digest* author, Monsieur Louis Moreau Lislet, has copied his new code from that of Bonaparte and



the present imperial laws of France. It was wise of Governor Claiborne not to veto the adoption of this code as he had so unwisely vetoed the bill passed by the legislature back in 1806 declaring civil law to be in force throughout Louisiana. Now that ignited a political firestorm – a huge backlash from the local “ancients.”

**JEFFERSON:**

(Sitting at his writing desk, pen in hand.)

“Governor Claiborne: Congratulations on the adoption of the Digest which reduces Louisiana’s private law to writing. This will give much assurance and certainty to Americans moving into Louisiana about the law to be applied to them. And it will help facilitate the assimilation of Louisiana’s legal regimes to the principles of American democracy. After all, the wholesale introduction of American common law is completely infeasible because of local anxieties over the future of property rights in land grants made during the colonial period.”

**CLAIBORNE:**

(Throwing up his hands.)

Can the President not make up his mind as to the direction he wants Louisiana law to take?

**POYDRAS:**

[Spoken in French: Oh hush, Governor. It looks like he has – and we could not be happier about it.]

**TRANSLATOR TWO:**

Oh hush, Governor. It looks like he has – and we could not be happier about it.

**CASA CALVO:**

[Spoken in Spanish: Nor we.]

**TRANSLATOR ONE:**

Nor we.

**CLAIBORNE:**

Perhaps the Digest has prepared the way for statehood, then, by putting to rest the fears of Louisianians that their law would be set aside by becoming a part of the United States. That alone would make the Digest worthwhile, and its adoption recommended by the strongest considerations of

justice and policy.

**LIVINGSTON:**

And Governor, the path to statehood has also been smoothed by the fact that Louisiana’s territorial courts have long employed the practices and procedures of other American states – a common law-oriented judicial discourse applying a system of private civilian law.

**CLAIBORNE:**

You might say the best of both worlds – American procedure applying French . . .

**CASA CALVO:**

(Interjecting.)

[Spoken in Spanish: Spanish . . .]

**CLAIBORNE:**

. . . private civilian law. [Pause.] But there is a federal court in Louisiana occupied by my friend from South Carolina, Judge Dominick Hall. Will this compromise work for an American federal court?

**LIVINGSTON:**

The federal court will apply common law; the local courts, civil law. I fear that as American procedural law is used more and more by the territorial and federal courts, the judges of the local courts will import Anglo-American common law doctrines into Louisiana law little by little. In time, as the people of Louisiana become Americanized, so will its laws.

**JEFFERSON, CLAIBORNE:**

(Simultaneously.)

Genius!

**JEFFERSON:**

Unity of law will help achieve national unity, and Louisiana will have avoided eternal alienation from the American union . . .

**CLAIBORNE:**

. . . because Louisiana’s “uncommon” civil law will be made common and American after all.

**POYDRAS:**

[Spoken in French: A tragedy if it is to be so – to have American commoners debase the uncommon law of Louisiana’s uncommon people would be a tragedy too great to bear.]

**TRANSLATOR TWO:**

A tragedy if it is to be so – to have American commoners debase the uncommon law of Louisiana’s uncommon people would be a tragedy too great to bear.

**NARRATOR:**

(Sweeping back onto center stage.)

As it would be too difficult to accomplish.

Louisianians held on to their civil law and used statehood to preserve their cultural distinctiveness and their identity as a people, thereby turning the tables on President Jefferson’s best laid plans. So Louisiana remains a civil law state – with a proud civilian legal tradition – and remains set apart from the Anglo-American common law tradition of all 49 other states in regard to its private law. A civil law island in

a common law sea. And, yet, Louisiana – including especially its federal courts – became thoroughly American in its public and criminal law, accepting almost immediately the common law’s two great features of civil liberty – trial by jury and the writ of habeas corpus.

And how did Louisiana accomplish this feat – of reconciling conflicting legal traditions? It did so largely using the same formula that has worked in every other area of Louisiana’s history and the life of its people – by making room for everybody, the ancient inhabitants and American settlers alike. And, of course, the British greatly assisted in unifying the whole of the local population to resist their invasion just a few years later. Nothing forges unity in a resilient people like fighting for all you have against threats that would take it all. This is the uncommon birth of Louisiana’s uncommon law for its uncommon people.



1813



Pierre Derbigny, George Mathews, Dominick Augustin Hall (no photo exists)

1913

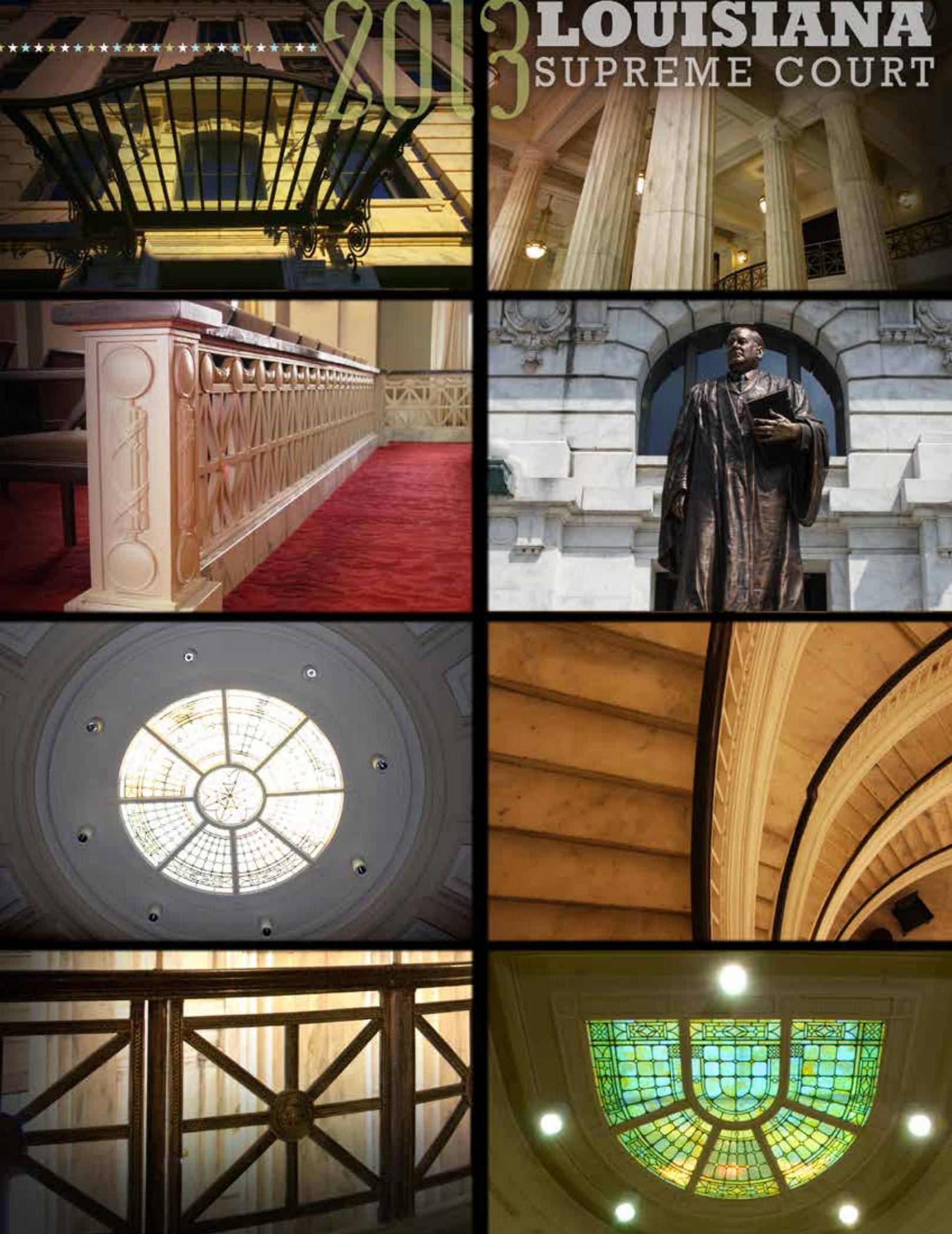


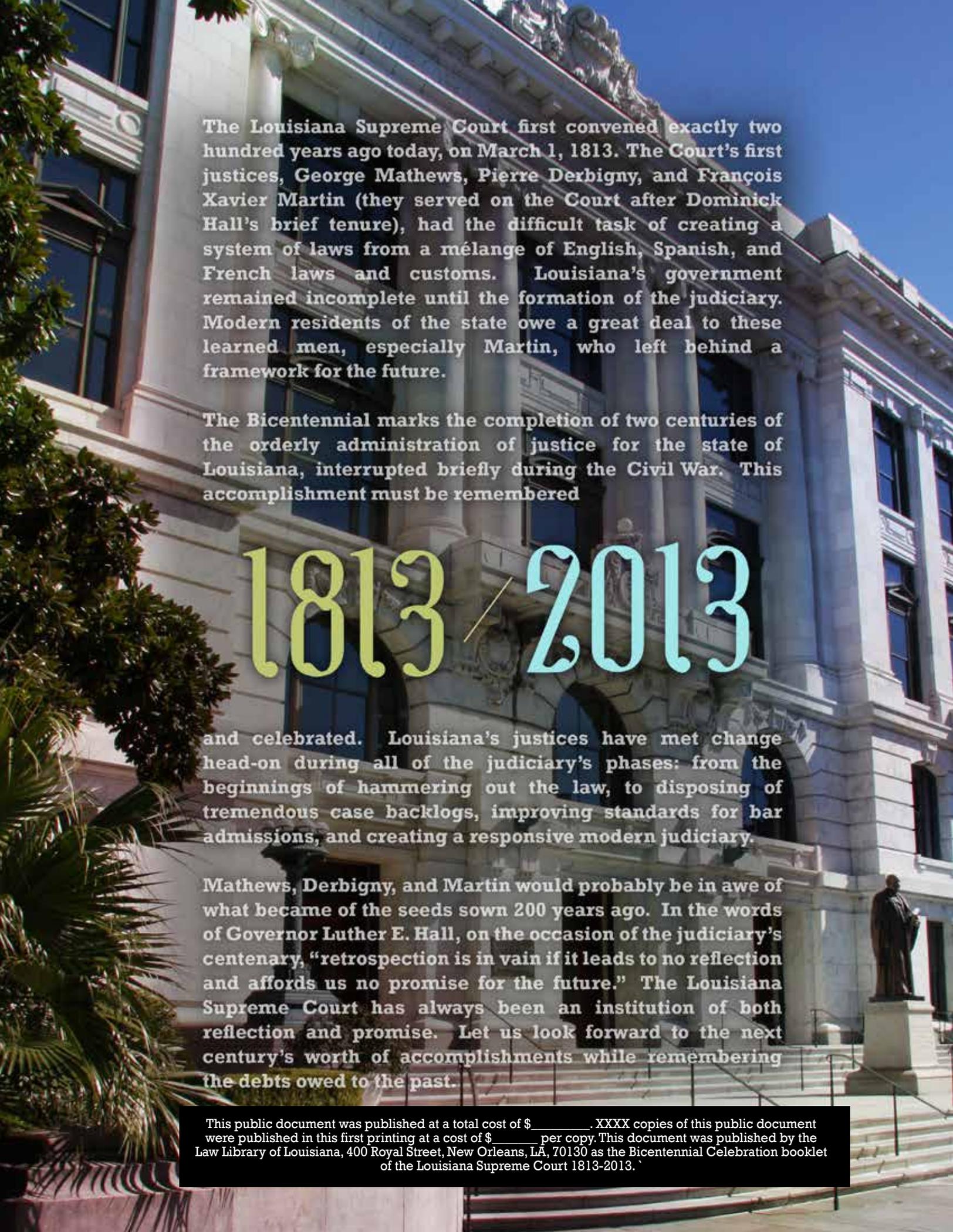
Joseph A. Breaux — **Chief Justice**  
Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville

2013



Bernette J. Johnson — **Chief Justice**  
Marcus R. Clark, John L. Weimer, Jeffrey P. Victory, Jeannette Theriot Knoll, Greg G. Guidry,  
Jefferson D. Hughes,



A photograph of the Louisiana Supreme Court building, a grand neoclassical structure with white columns and a pediment. The building is set against a clear blue sky. In the foreground, there are green trees and a statue of a man in a dark suit standing on a pedestal to the right. The text is overlaid on the image in various colors and sizes.

The Louisiana Supreme Court first convened exactly two hundred years ago today, on March 1, 1813. The Court's first justices, George Mathews, Pierre Derbigny, and François Xavier Martin (they served on the Court after Dominick Hall's brief tenure), had the difficult task of creating a system of laws from a mélange of English, Spanish, and French laws and customs. Louisiana's government remained incomplete until the formation of the judiciary. Modern residents of the state owe a great deal to these learned men, especially Martin, who left behind a framework for the future.

The Bicentennial marks the completion of two centuries of the orderly administration of justice for the state of Louisiana, interrupted briefly during the Civil War. This accomplishment must be remembered

1813 / 2013

and celebrated. Louisiana's justices have met change head-on during all of the judiciary's phases: from the beginnings of hammering out the law, to disposing of tremendous case backlogs, improving standards for bar admissions, and creating a responsive modern judiciary.

Mathews, Derbigny, and Martin would probably be in awe of what became of the seeds sown 200 years ago. In the words of Governor Luther E. Hall, on the occasion of the judiciary's centenary, "retrospection is in vain if it leads to no reflection and affords us no promise for the future." The Louisiana Supreme Court has always been an institution of both reflection and promise. Let us look forward to the next century's worth of accomplishments while remembering the debts owed to the past.

This public document was published at a total cost of \$\_\_\_\_\_. XXXX copies of this public document were published in this first printing at a cost of \$\_\_\_\_\_ per copy. This document was published by the Law Library of Louisiana, 400 Royal Street, New Orleans, LA, 70130 as the Bicentennial Celebration booklet of the Louisiana Supreme Court 1813-2013.