



# DE NOVO

The Newsletter of  
The Law Library of Louisiana

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## BICENTENNIAL MILESTONE

by Miriam Childs



*The Louisiana Supreme Court's courtroom in decorative bunting to commemorate its bicentennial on March 1, 2013. Left to right, Justices Marcus R. Clark, John L. Weimer, Jeffrey P. Victory, Chief Justice Bernette J. Johnson, Jeannette T. Knoll, Greg G. Guidry, and Jefferson D. Hughes, III.*

The Louisiana Supreme Court celebrated its 200th anniversary on March 1, 2013. The Louisiana Supreme Court first convened in New Orleans on March 1, 1813. Present at the Court's first session in 1813 were judges Dominick A. Hall (presiding) and George Mathews. The bicentennial ceremony, which commem-

orated the Court's two centuries of legal heritage, was held as a special session of the Louisiana Supreme Court. The ceremony took place in the 4th floor courtroom, and an overflow room with a monitor accommodated the many guests in attendance. The event was free and open to the public, with the option of one hour of CLE ac-

creditation for Louisiana attorneys. Justice Greg G. Guidry chaired the Court's Bicentennial Committee, which was in charge of planning the ceremony.

Louisiana Lieutenant Governor Jay Dardenne served as the master of ceremonies. After Lieutenant Governor

*continued on page 2*

## BICENTENNIAL, CONT.

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Dardenne's opening address, the Washington Artillery presented the colors, which was followed by the Pledge of Allegiance, led by Donna D. Fraiche, President of the Supreme Court of Louisiana Historical Society. Bishop Shelton J. Fabre gave the invocation, and Chief Justice Bernette J. Johnson delivered welcoming remarks to the attendees.

The main portion of the ceremony featured four speakers who discussed various aspects of the Court's history, including: *A Walk Through the Streets of New Orleans at the Time of the Court's Foundation*, by Senior Professor of Practice at Tulane School of Architecture Richard Campanella; *The Civilian Aspects of Louisiana Law*, by LSU Louis B. Porterie Professor of Law John Randall Trahan; *The Role of the Louisiana Supreme Court in the Early Civil Rights Movement*, by UNO Emeritus professor of history Raphael Cassimere, Jr.; and *The History of the Louisiana Supreme Court*, by UNO Emeritus Distinguished Professor of History and Bicentennial Court Historian Warren M. Billings.

Students from the Inter-

national High School of New Orleans took the stage following the speakers to present a short, trilingual play entitled *An Uncommon Birth: Shaping Louisiana's Legal Tradition for Statehood*, written by New Orleans attorney Barry Ashe. At the conclusion of the ceremony, Justice Jeannette T. Knoll led the audience in a stately rendition of the National Anthem. The Lusher Charter High School Jazz Band provided lively entertainment at the reception afterwards on the first floor.

The Court's centennial was celebrated in 1913 with a ceremony featuring well-known attorneys and politicians of the day. It was only fitting that the Court commemorated its next hundred years with another big celebration. A brand new website containing digitized versions of some of the earliest Louisiana Supreme Court historical documents can be viewed at <http://www.lasc.org/Bicentennial/home.aspx>. δ

## WELCOME FRAN NORTON!

*by Jennifer Creevy*



*Mr. Fran Norton, the Law Library's new Head of Public Services.*

The library would like to welcome our newest staff member, Francis X. Norton, as our Head of Public Services.

Fran comes to us with more than 20 years of law library and legal experience. Fran was employed at the Loyola University New Orleans School of Law Library since 2002, where he was a Reference Librarian and an Associate Professor.

Prior to that, he worked as a Reference Librarian at the Alexander Campbell King Law Library at the University of Georgia and served as an Attorney for the Prisoner Legal Counseling Project at the University

of Georgia School of Law from 1989 to 1996.

Fran has extensive experience in teaching legal research to students and attorneys, as well as public speaking and web editing experience and has taught continuing legal education (CLE) classes.

Fran holds a Bachelor of Arts in English from the University of Notre Dame in Indiana, a Juris Doctor from the University of Georgia in Athens, and a Master of Library and Information Science from the University of South Carolina in Columbia. Please join us in giving Fran a warm welcome to the Court!

δ

# JUDGE T. WHARTON COLLENS RETURNS

by Tara Lombardi

In 1910, Judge T. Wharton Collens's daughters presented a portrait of their father to the Louisiana Supreme Court.<sup>1</sup> At the time, the Court had just moved into the Civil Courts Building, a beautiful new structure at 400 Royal Street with plenty of wall space. However, the Court moved out in 1958, and the new building at 301 Loyola Avenue had fewer places to hang portraits.

Thirty years later, Collens's portrait was found in the Loyola Avenue building's basement and was given back to the Collens family, who restored the painting and displayed it in the home of Frances Collens Curtis, Judge Collens's great-granddaughter. When Mrs. Curtis recently decided to sell her home, she returned the portrait to us so that it would hang in the halls of the Louisiana Supreme Court building at 400 Royal Street, where it had originally resided in 1910. Just last week, two of the judge's great-great granddaughters, Nell Tilton and Carol Kemper, came to see his portrait, which was painted by Bernard Moses.

In addition to the painting, Mrs. Curtis donated *Picturesque America*, "a two-volume set of books describing and illustrating the scenery of America, published by D. Appleton and Company of New York in 1872 and 1874 and edited by the romantic poet and journalist William Cullen Bryant (1794-1878), who also edited the *New York Evening Post*. The work's essays, together with its nine hundred wood engravings and fifty steel engravings, are considered to have had a profound influence on the growth of tourism and the historic preservation movement in the United States."<sup>2</sup> The Law Library plans on keeping the invaluable books



Great-granddaughters of Judge Collens, Carol Kemper and Nell Tilton, pose with his portrait.

secure in our Rare Book Room, which is open by appointment only.

John Wharton Collins (he later changed the spelling) founded Covington, Louisiana in 1810, and his only child Thomas Wharton was born there on June 23, 1812.<sup>3</sup> Thomas was educated in the New Orleans public schools, and as a young man, he wrote a historical tragedy about the revolt of New Orleans's Gallic population against Spanish Rule called *Martyr Patriots*, which was performed at the St. Charles Theatre in 1836.<sup>4</sup>

During his formal education, Collens excelled at mathematics and took a particular interest in a utopian socialist philosophy that encouraged labor reforms, which he would continue to explore throughout his life and in two of his published works: *Humanics* (1860) and *Eden of Labor* (1876).

His legal education began by reading law with the Honorable Thomas McCaleb, and he was admitted to the bar in 1833. In addition to practicing law, he worked as a French and Spanish translator for the Louisiana Senate in 1834 and edited the *True American* from

1834-1836. In 1836, Collens became the Chief Deputy Clerk for the U.S. Circuit Court of Louisiana. He was the Orleans District Attorney from 1840-1842 and was elected Presiding Judge of the City Court of New Orleans from 1842-1846.

Judge Collens participated in the Louisiana Constitutional Convention of 1852, and was elected judge of New Orleans's First City Court in 1856, where he remained until General Butler captured the city. Soon after, Collens left town and moved to Pass Christian, Mississippi for the duration of the War.

Although he suffered great hardship while in Pass Christian, when Collens returned to

New Orleans in 1868, he was elected Judge of the Seventh District Court, and served until 1873. Judge Collens married Amenaide Milbrou in 1833 and fathered eight children while managing a successful legal and publishing career for over four decades. Collens died in New Orleans on November 3, 1879, and is buried at St. Louis Cemetery No. 1.

Although Judge Collens was not a Louisiana Supreme Court justice, he had a connection to this Court. His daughter Marie Idealie married into the McCaleb family, thereby making Judge Collens the great-grandfather of our Chief Justice E. Howard McCaleb, who served on our Court from 1941-1972.

If you'd like to view Judge Collens's portrait in person or learn more about him, please contact Tara Lombardi at [tlombardi@lasc.org](mailto:tlombardi@lasc.org) or 504-310-2404. δ

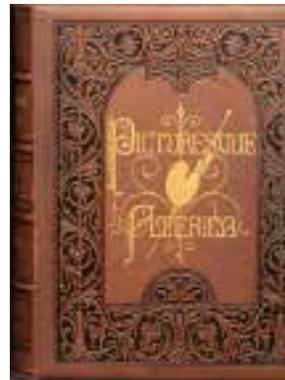
## Sources consulted:

<sup>1</sup> *States Item*, 4/20/1910.

<sup>2</sup> "Picturesque America or The Land We Live In," available at <http://www.lucedarswampcollection.org/template1/picturesque.html> [accessed 13 August 2013]

<sup>3</sup> "Covington: Living History & Covington's Founding Families," available at [http://www.insidenorthside.com/feb\\_mar/art6.htm](http://www.insidenorthside.com/feb_mar/art6.htm) [accessed 13 August 2013]

<sup>4</sup> Caryn Cosse Bell, "Collens, Thomas Wharton," in John A. Garraty, ed., *American National Biography*, v. 5 (New York: Oxford, 1999), 233-235.



Cover of Picturesque America.



Hand-colored steel engraving from Picturesque America entitled "City of St. Louis."

# LAW LIBRARY'S LAW DAY CLE

by Katie Nachod

Law Day is a day set aside by our nation to celebrate the rule of law and to educate the public as to the important role that laws and the legal process have in our democratic system of government and in our everyday lives.

The theme for the 2013 Law Day, chosen by the American Bar Association, is "Realizing the Dream: Equality for All," a particularly fitting one for the sesquicentennial of the Emancipation Proclamation because it harks back to the words of Abraham Lincoln and of Dr. Martin Luther King.

The year 2013 marks the 150th anniversary of the issuance of the Emancipation Proclamation, a document in which President Abraham Lincoln set forth in rather dry language some momentous principles of freedom and justice. If you would like to read a copy of the original document, please go to this National Archives and Records Administration website: [http://www.archives.gov/exhibits/featured\\_documents/eman-cipation\\_proclamation/](http://www.archives.gov/exhibits/featured_documents/eman-cipation_proclamation/). Freedom did not occur with the stroke of the pen with which Lincoln signed the document. In 1963, during the Proclamation's centennial, Dr. Martin Luther King stood in the shadow of the Lincoln Memorial and made his resounding "I Have A Dream" speech ex-

horting our nation to live up to the promise of equality and justice under the law, even as civil rights struggles and violence were going on throughout the country.

The Law Library of Louisiana decided to honor Law Day and educate the public in two ways. First, the Law Library created an exhibit in four display cases, each one dedicated to a different subtopic. The first case contains some general information on the Law Day theme, and some resources related to the Emancipation Proclamation. The second case explores issues related to voting rights and other civil rights, while the third case covers aspects of diversity and tolerance. The last case is devoted to the principles of gender equality and human rights. Each of these displays features documents, photographs, and statistics related to these fundamental concepts of our society and government, and we invite you to stop by the library and take a look. After viewing them, you may be moved to reflect on the work that remains to be done in order for us to realize the promise of the Emancipation Proclamation and the dreams of Dr. King and so many others for liberty and justice for all.

The second way that the Law Library of Louisiana celebrated Law Day 2013 was by sponsoring, along with the Supreme Court of

Louisiana Historical Society and the A.P. Tureaud Inn of Court, a free CLE program on Thursday, May 2, entitled, "Lincoln's Emancipation Proclamation: How the Commander in Chief Created a New Birth of Freedom." Our speaker was E. Phelps Gay, a partner at local law firm Christovich and Kearney, and a man with an abiding and even consuming interest in our 16th President. Judge Ethel Simms Julien of the Orleans Civil District Court introduced Mr. Gay prior to his lecture. Mr. Gay gave a very well-received talk on some of the aspects of Lincoln's nature and character for our 2009 Law Day CLE, which celebrated the bicentennial of Lincoln's birth. In that talk, he humanized Lincoln in ways both enlightening and touching. This time, his words focused on the evolution and the effects of the Emancipation Proclamation, which he deemed "undoubtedly one of the most important documents in American history." I cannot do full justice in this short article to Mr. Gay's excellent and detailed presentation, but I will try to give you some sense of its essence and highlights.

Even though Lincoln was ordinarily an extremely modest and even humble man, he thought that the Emancipation Proclamation was "the central act of my administration," and

possibly even "the great act of the nineteenth century." This document declared free the slaves in most of the Confederacy, changed the purpose and direction of the Civil War, and led to the passage of the Thirteenth Amendment, forever banning slavery in America. Gay noted that that latter legislative achievement has been compellingly dramatized in Steven Spielberg's movie last year, *Lincoln*, starring Daniel Day Lewis. Even though the seed of equality planted in the words of Thomas Jefferson's Declaration of Independence and Abraham Lincoln's Emancipation Proclamation did not really begin to sprout until the Civil Rights Movement in the 1960s, Lincoln's proclamation was certainly an important step along the road to freedom.

One complaint that many Lincoln fans have with the document is that unlike so many of Lincoln's other writings, it has no flair, no poetic flourishes, no charged rhetoric or eloquent appeals to liberty and justice. Historian Richard Hofstadter famously remarked that it had "all the moral grandeur of a bill of lading." However, Lincoln intended his words to be dry legalese, purposely designed not to stir up emotion or draw attention, but rather to withstand judicial

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# LAW DAY CLE, CONT.

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scrutiny and pass constitutional muster. The document was also an attempt to keep a deeply divided and embittered Union from fraying further toward separation. Lincoln basically freed the slaves to win the Civil War and save the relatively young nation. While there is no question that Lincoln saw slavery as a great moral evil, he initially did not view his role as President to encompass ending the institution. He sincerely believed that under the Constitution, he did not have the right to abolish slavery in the southern states. Slavery was recognized in the U.S. Constitution, albeit in oblique references within the three-fifths clause and the fugitive slave clause. In addition, slavery was considered the sole province and prerogative of the states, not of the federal government. He hoped that there might be a gradual dying out of the institution if the border states emancipated their slaves, thereby putting pressure on the southern states to recognize the error of their ways.

However, Lincoln underestimated the degree to which states like Kentucky, Maryland, and Missouri had become devoted to slavery, and also the degree to which they believed that as president, Lincoln should stay out of their domestic affairs. Lincoln had to find another means to his end of saving the nation from slavery. In a sense, the war itself destroyed slavery. War is hell, always chaotic, disruptive, and unpredictable, and it has a way

of shifting landscapes and changing all the rules. Over the course of the Civil War, some 500,000 fugitive slaves escaped to Union lines. In a sense, they emancipated themselves by fleeing the south. Those in power, including House Republican Thaddeus Stevens of Pennsylvania (played so vividly by Tommy Lee Jones in the film *Lincoln*), believed that being at war gave the federal government increased powers to act. Quoting Cicero, Stevens said, "In time of war, the laws are silent."

What followed was a sequence of events outlined by Gay that moved Lincoln closer to the idea of creating a proclamation of freedom. Lincoln came to the conclusion that emancipation was a necessity if he was to save the Union from fracture and ultimate destruction. The rebels were seen as traitors, and the loss of their slaves was viewed as an appropriate punishment for their acts of rebellion. On July 22, 1862, Lincoln presented his first draft of the Emancipation Proclamation to his cabinet. The rest, as they say is history.

Lincoln did not receive universal support for his plan, but the process continued. While the first draft mentions the subject of voluntary colonization of African Americans, an idea abhorrent to the great abolitionist and former slave Frederick Douglass and to many other

African-American leaders and individuals, the final version issued on January 1, 1863, contained no mention of colonization. Gay concluded his remarks by observing that the Emancipation Proclamation captured the hearts and imaginations of millions of Americans and changed the character of the war. The Union Army now marched for freedom, not for restoration of the slaveholding Union that existed when the Civil War started. We may still have some distance to travel and quite a bit of work to do in order to bring our country closer to the goal of liberty and justice for all, but it is frightening to contemplate where we would be now if Lincoln had not created this new birth of freedom for America 150 years ago.

We are very grateful to E. Phelps Gay for sharing his research and his insights with us. If you would like to read more about the Emancipation Proclamation or Abraham Lincoln, our library has numerous relevant books in our collection. Check out our online catalog at <http://207.67.203.75/L20013/OPAC/Index.aspx>, or stop by our beautiful library and let one of our helpful Reference staff members assist you. δ

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\$5.00 per document

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Per-minute charges are \$9.00 for databases outside of subscription

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Printing from Lexis:  
\$7.00 per document

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Patron Access:  
\$25.00 per search

Westlaw KeyCite:  
\$9.00 per case

Lexis Shepardizing:  
\$9.00 per case

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\$50.00 per hour

# LOUISIANA SUPREME COURT ARCHIVES

by Warren M. Billings

*What follows are the recollections of Warren M. Billings, Distinguished Professor of History, Emeritus, from UNO, regarding the history of the partnership between the Louisiana Supreme Court and UNO in preserving the Court's archives. Professor Billings served as the Louisiana Supreme Court's historian from 1982-2005. He was appointed by the Court as the Bicentennial Court Historian in 2013.*

A dinner party conversation led to the making of the partnership between the Court and UNO, though that was an outcome I never suspected at the time. Carol, my wife, and I were close friends with one of Justice John Dixon's early clerks, Fred Alexius. He and



*The beginnings of the Louisiana Supreme Court's partnership with UNO. Left to right, Professor Warren M. Billings, Chief Justice Joe Sanders, and Homer L. Hitt, Chancellor of UNO. Photo taken by Warren Gravois, 1976. Courtesy UNO Special Collections.*

his wife Myra had us over to dinner one evening in the early 1970s. The other guests were the Dixons and Justice Al Tate and his wife Clare. No sooner had Tate learned that I was an historian than he spent much of the evening chatting me up about history and legal records as historical sources. When we parted he invited me to lunch down at the courthouse. I took him up on the invitation, and so began an acquaintanceship that bloomed into a wonderful friendship that abided until his death in 1986.

One day in 1976 I got a phone call from Justice Tate asking if I might advise him about what to do with the Court's records, which verged on overwhelming the building's limited stor-

age space. His concern was for the earliest records that he feared might just get thrown away. As I recollect, I suggested that he should consult with the state archives, only to be told that the agency had neither the staff nor a proper facility to care for the collection. Furthermore, he knew that the Court would not be eager for the records to leave, so transferring them to Baton Rouge was not an option. I then said that because I knew little to nothing about the Court or Louisiana I was uncertain about how I might be of any further use. Not to be put off, Tate asked if at the very least I might come down and allow him to show me the collection, which I agreed to do, and we set up a time. On the appointed day, I

met Tate in chambers, not quite knowing what to expect next. Down we went to the basement, which was dimly lit and overrun by roaches scurrying all over the place. Such light as there was revealed a mammoth accumulation of documents stacked more or less neatly in row upon row of pigeonhole shelving. I had never before seen such a huge gathering of untouched records, nor have I since. Tate passed from range to range pulling out files that he gleefully called to my attention. They dealt with such things as the *Slaughterhouse* case, the *Plessy* case, and a suit involving the succession of the Creek leader Alexander McGillivray that included a document bearing the signatures of George Washington, Thomas Jefferson, and Henry Knox. The more I saw the more I realized that here was the single largest unexploited source of Louisiana history in existence. The collection appeared to be in reasonable order and generally good condition, but it needed to be in a climate-controlled environment and properly curated.

*continued on next page*

## THE LIBRARY'S E-RESOURCES

Bloomberg BNA Tax Management Portfolios

Bloomberg BNA U. S. Law Week

Gale LegalForms

HeinOnline

LegalTrac

Lexis Shepard's

LoisLaw

NFPA Standards

New Orleans Notarial Archives

PACER

ProQuest Congressional

Westlaw/Patron Access  
WestlawNext

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# LOUISIANA SUPREME COURT ARCHIVES, CONT.

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We went back to Tate's chambers and talked about where might the collection be reposed, protected, and ultimately made available to scholars and other researchers. At some point in our conversation, I raised the possibility of the Earl K. Long Library at UNO becoming the repository. Tate jumped at the idea and urged me to sound out the appropriate university administrators. The university librarian was a bit leery, but he came around after Chancellor Homer L. Hitt instructed me on behalf of the University to see if a satisfactory arrangement could be struck with the Court. Over a period of several weeks, Tate and I worked out a draft agreement that was crafted in final form and promulgated in November 1976. Briefly put, the Court designated UNO as the official depository of its historic records; that is all items generated between 1813 and 1921. In return the University undertook to conserve and organize the records with a view to making them accessible to the Court, scholars, students, or anyone else who had a legitimate purpose to explore the collection. I should note in passing that Chief Justice Sanders was keen to do this, as were all of his colleagues, save one.

At the time the plan was to microfilm everything as it was cleaned and properly housed, which appeared to be a fairly straightforward, if time-consuming process. It turned out, however, that the collection was badly deranged owing to its have been captured by the Union army, transported to Washington, returned to New Orleans, and moved several times before it came to rest in the old courthouse on Loyola Avenue. That discovery complicated the conservation process. Through the good offices of Chancellor Hitt the Library got a position that allowed the hiring of Marie Windell. Mrs. Windell slowly began the arduous task of re-establishing a degree of intellectual control over the collection, and as more and more boxes of documents were transferred to campus, the collection became useable to researchers.

It was always my intention to do no more than assist with the transfer and go back to my research and writing on colonial Virginia legal history, but that was not to be. Almost at once, I suddenly found myself as the "expert" on all things

related to the collection. Justice Tate and Justice Dixon encouraged me to write about the Court, which I was reluctant to do because of my ignorance of Louisiana legal history. To encourage me the more, Justice Dixon went so far as to designate me court historian in 1982, by which time, I admit, I had become hooked on the idea of working through the records. (I held the place until I stood down from UNO in the wake of Katrina.) Also, by then, the collection was sufficiently available that I began to steer many of my graduate students to it in search of seminar papers, documentary editing projects, and thesis topics. Much of their work was highly original and saw publication in a variety of scholarly journals. That was the beginning of what is now called "the New Louisiana Legal History." I would have to say that my part in founding that interpretation stands as one of my most enjoyable intellectual experiences because I got to engage with bright, dedicated, thorough scholars whose accomplishments far exceed mine.

Today the collection is among the most widely used of all the Long Li-

brary's manuscript holdings. It has generated literally hundreds of books, articles, conference papers, seminar projects, masters' theses, and doctoral dissertations written by scholars from all over the place. Significant portions of the collection have been digitized and are readily available online, thus realizing a hope of mine at the time of the deposit that the collection would be widely accessible. I had no idea in 1976 that the day would come when electronic media would become the means of dissemination.

Along the way, I got to know and work with members of the Court in various ways I need not go into here, though I will mention one in passing. Justice Tate introduced me to Chief Justice Fournet, who was the first live historical figure of my acquaintance. That led to a series of oral history interviews that Raphael Cassimere and I conducted, and about which Cassimere has written.

But for the Court's foresight in partnering with UNO, none of these things would ever have come to pass. δ

De Novo  
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Feel free to email the  
editor at [mchilds@lasc.org](mailto:mchilds@lasc.org).

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## LIBRARY SUMMER INTERNS

*by Jennifer Creevy*

The Law Library is pleased to announce the graduation of our student worker, Lillian Shivers, from Loyola University. She majored in Political Science and plans to pursue a law degree. However, she is taking a year off from school to work full-time at the library for the next year as a library assistant. We are very lucky to have Lilly continue on with us.

The library was fortunate to have had three very bright student workers helping us this past summer. All three workers tirelessly filed pocket parts, stamped



*Ms. Lillian Shivers, recent Loyola graduate.*

new journals and generally did the grunt work that keeps the library functioning well. Alexandra Bertrand hails from New Orleans and is a senior at Southern University in Baton Rouge. She is majoring in Criminal Justice and is pondering attending law school in the future. She is a member of the

sorority Zeta Phi Beta and likes to spend time with her short-haired American orange and white cat, Charley.

Another student we were lucky to have work for us was Leslie LaCoste. Leslie is a junior at the University of Alabama in Tuscaloosa, majoring in Political Science and minoring

in Spanish. She also has plans to go to law school. Leslie grew up in New Orleans and likes to read and bake. We had the delicious opportunity to sample her chocolate chip cookies.

Our third student this summer was Emily Nuttli, a senior at LSU. Emily is studying history and political science with an eye on post-graduate studies in history. She is a member of the Delta Gamma sorority and comes from Old Metairie. We wish all three of our students the best of luck in their future endeavors. δ