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NEWSLETTER OF THE LAW LIBRARY OF LOUISIANA



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JUSTICES OF THE LOUISIANA SUPREME COURT, 1865-1880

by *E. Phelps Gay*

BOOK REVIEW, *The Justices of the Supreme Court of Louisiana, 1865 - 1880*

Evelyn L. Wilson, a professor at Southern University Law Center, has written a highly informative and impressively researched book profiling eighteen of the nineteen men who served as Justices of the Louisiana Supreme Court between 1865 and 1880. As might be expected, the colorful and contrasting personalities of these men (ranging from Union-oriented planters who joined the Republican Party and were appointed by Reconstruction governors to die-hard Democrats who fought for the Confederacy and were appointed by Democratic Governor Francis T. Nicholls), as well as the contentious and even violent political times through which they served, offer an occasion for lively reading and historical reflection.

The book is divided into three parts: profiles of those Justices who served during the Civil War and its immediate aftermath (1865-1868); those who served during the period of Congressional Reconstruction (1868-1877); and those who served after the "Democrats



*Evelyn Wilson, professor at Southern University Law Center and author of *The Justices of the Supreme Court of Louisiana, 1865-1880**

prevailed" with the election of Governor Nicholls in 1876 and the subsequent "deal" which allowed Rutherford B. Hayes to become president of the United States and led to the withdrawal of federal troops from Louisiana (1877-1880). Along the way we encounter an interesting array of politicians and jurists from all corners of the state. Anyone who has lived in Louisiana and knows something about its history will recognize many of the family names, such as Thomas Courtland Manning of Alexandria, William Wirt Howe

of New Orleans, and Alcibiades DeBlanc of St. Martinville.

Drafted by delegates from New Orleans and surrounding parishes under Union control, Louisiana's 1864 Constitution provided for the appointment of five justices by then-governor, Michael Hahn. Although later rejected by the U.S. Congress because it did not extend suffrage to African-Americans, that Constitution nevertheless became the state's governing document until the Constitution of 1868 took

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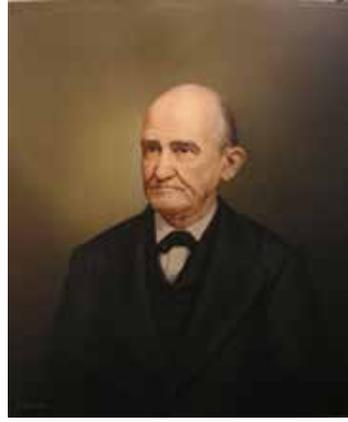
JUSTICES OF THE LOUISIANA SUPREME COURT, 1865-1880 (CONT.)

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effect. Thus, in 1865, Governor Hahn appointed Zenon Labauve, a sugar planter from Iberville Parish, and John H. Ilsey, an Oxford-educated opponent of secession from Orleans Parish, to serve on the high court. Professor Wilson provides short “bios” of these men, sometimes consisting of quotations from obituaries and eulogies, in part because the historical record of the court during this time is somewhat thin.

After his election to the U.S. Senate in January 1865, Hahn resigned as governor and was replaced by Lt. Gov. James Madison Wells, one of many north-central Louisiana slave-holders who remained loyal to the Union. Wells appointed William Hyman (Rapides Parish), Rufus King Howell, and Robert B. Jones (both of Orleans Parish) to the court. Professor Wilson describes these jurists as men of integrity who tried to restore a sense of calm and order to a state still reeling from the effects of war. Many cases they decided concerned war-related issues, such as whether creditors who provided Confederate notes to debtors could now collect in U.S. currency. The answer was no.

James Govan Taliaferro of Catahoula Parish was another justice appointed to the high court by Gov. Wells. A delegate to the 1861 secession convention, he opposed the ordinance



Justice James Govan Taliaferro (left) and Justice John Ludeling (right)

and refused to sign it. In 1868, Taliaferro ran for governor against Henry Clay Warmoth and lost. Gov. Warmoth nevertheless re-appointed Taliaferro to the court where he served until 1876. Justice Taliaferro wrote the court’s opinion in *Wainright v. Bridges*, 19 La. Ann. 234 (1867), which nullified promissory notes executed for the purchase of slaves, reasoning that the obligation to pay the purchase price ended with the extinction of the buyer’s right to own slaves. Professor Wilson emphasizes that the justices serving in this era were “Unionists operating in a pro-Confederacy environment.” They wanted to put the war behind them and “get on with peacetime business.”

Under Louisiana’s 1868 Constitution, which (per Congressional mandate) extended the right of suffrage to all male citizens 21 and older, black or white, newly-elected Governor Warmoth, all of 26 years-old, was empowered to appoint a new set of justices. He re-appointed Justices Taliaferro and Howell and appointed John T. Ludeling (Ouachita Parish), William Wirt Howe (Orleans Parish) and W.G.

Wyly (Carroll Parish) as new members of the court.

Here let me interject that, in addition to offering interesting profiles of the justices, Professor Wilson’s book displays a curiously effective absence of argument or opinion regarding the political views of those who populate her story. Gov. Warmoth, for example, a former Union officer who initially styled himself a “Radical Republican” and supporter of voting rights for African-Americans, later vetoed civil rights legislation and aligned himself with what was known as the “planter class” of conservative Democrats. Yet there is little to no condemnation of him or anyone else in the book. Wisely, Professor Wilson allows the facts to speak for themselves.

As for the Reconstruction Court, John Ludeling, a former slave owner from Monroe who joined the Republican Party, served as Chief Justice from 1868 to January, 1877. The court met in the Sala Capitular (Council Room) of the

Cabildo in New Orleans. In 1870 it decided what became known as the Slaughterhouse Cases, affirming the state’s police power to create a private entity to protect the public water system. Professor Wilson characterizes this court as concerned with “enabling peace and prosperity” and with deciding cases in a fair and reasonable manner. At the same time, she notes that most members of the bar were Democrats who had been loyal Confederates, and they did not care for this Republican court.

Ultimately, the Reconstruction Court was swept away in a “whirlwind of politics.” Republican Stephen B. Packard and Democrat Francis T. Nicholls both claimed victory in the gubernatorial election of 1876. On January 9, 1877, over 3,000 armed men, supporters of Nicholls and members of certain “white leagues,” gathered in Jackson Square determined to “wrest control of the state’s government from the Republicans.” Justices Ludeling, King, and John Edwards Leonard were ready to begin their court session, but the court crier refused to open court unless the justices appointed by Republican Gov. William Pitt Kellogg left the building, allowing justices appointed by Gov. Nicholls to take their place. Due to the opposition’s overwhelming force,

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JUSTICES OF THE LOUISIANA SUPREME COURT, 1865-1880 (CONT.)

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the Reconstruction justices left and never came back. “By this act,” Professor Wilson notes, “the Nicholls government became the de facto government of Louisiana.”

The author goes on to describe what many historians have called the “Wormley House Bargain,” under which the electoral votes of Louisiana, South Carolina, and Florida went to Rutherford B. Hayes (giving him the presidency over Samuel J. Tilden) in exchange for the new president’s recognition of southern governors like Nicholls and his agreement to withdraw federal troops. This is a much-debated set of historical events (Professor Wilson notes that Nicholls, who himself later served as Chief Justice of the Louisiana Supreme Court, denied any such bargain to the end), and I should add that the book does not purport to be a history of Reconstruction in Louisiana. Professor Wilson’s focus remains on

the men who served on the court from 1865 to 1880 and the cases they decided. But there is no denying the historical backdrop provides interest and excitement for the reader.

Gov. Nicholls appointed five attorneys to serve on the court: Chief Justice Robert Hardin Marr (Orleans), and Associate Justices Thomas Courtland Manning (Rapides), Alcibiades Derneville DeBlanc (St. Martin), William Brainerd Spencer (Concordia), and William B. Giles Egan (Caddo). All were Democrats and former Confederates who opposed Republican Reconstruction. Marr had been a leader of the notorious Battle of Liberty Place in New Orleans, and DeBlanc had organized a White Man’s or Caucasian Club in Franklin. Similar groups across the south eventually combined to form the Knights of the White Camellia.

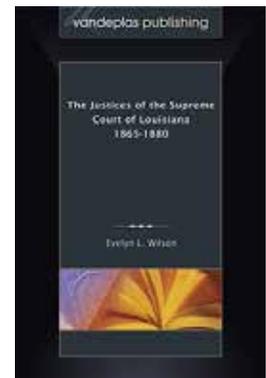
As one would expect, the

1877 court adopted a different attitude toward the former Confederate government, holding that contracts for payment in Confederate treasury notes could be enforced. The court also rejected a petition to desegregate New Orleans public schools, a decision later reinforced in the “passenger car” case of *Plessy v. Ferguson*. On the whole, Professor Wilson notes that while these men were more outspoken than the Reconstruction justices, they were also “highly motivated” to do what they thought was right. They were emboldened, she suggests, by the support they enjoyed from the practicing bar and by their role in restoring Democratic control over the state.

In the end, Professor Wilson believes the work of the Reconstruction courts in Louisiana was to a large extent superseded by either U.S. Supreme Court decisions or revisions to the Louisiana Constitution. On the other hand, she concludes these

courts operated with “some level of success” after the turmoil of the Civil War and performed the not inconsiderable service of “carrying forward the rule of law.”

Finally, let me note (as Professor Wilson does) that this fine book was supported in part by the Louisiana Bar Foundation Education Committee, which designated Professor Wilson its Scholar-in-Residence. The result is something both the Bar Foundation and Professor Wilson can point to with pride.



Please join Professor Wilson for a free CLE sponsored by the Law Library. More information on page 8.

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CONDUCTING LEGISLATIVE HISTORIES WITH THE POYNTER LIBRARY

by Cynthia Jones

One of the Law Library’s most frequent requests is to compile a legislative history for a Louisiana law. These requests come from internal and external patrons. In the main, they originate when someone wants to understand and trace changes in a statute. To answer these requests thoroughly and with dispatch requires not only familiarity with the Louisiana

legislative process but also a complete understanding of what resources are available, where and how they can be accessed and retrieved and how format and coverage govern the dissemination of information.

As with most state and federal law, compiling a Louisiana legislative history once meant delving deep in to print resources. One had to locate and retrieve multiple

bill versions; trace the legislative processes through an official journal; locate calendar entries and if possible, find that most elusive item, committee meeting minutes. Today, much of what was once available only in print has been digitized. Bill versions, House and Senate Journals, and their respective Calendars are available electronically through a number of sources. None however, is more reliable or viable than

the material curated and produced on the website of the David R. Poynter Legislative Research Library.

The Poynter Library and the Law Library enjoy a long and mutually beneficial working relationship. An important shared characteristic is that each library maintains an historic collection of primary legislative resources. As part of the Law Library’s

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NEW RARE BOOKS IN THE LAW LIBRARY

by Brandon Wright

The Law Library of Louisiana contains a comprehensive Louisiana law collection, including government documents, as well as numerous historical materials, treatises, and rare books. Our rare books include important works of Louisiana law and civil law materials written in English, French, and Spanish. Our library takes great care to maintain and conserve our rare books collection so that we may preserve the posterity of Louisiana's legal culture. Over the last several months, the library has acquired a few new rare books, which are very welcome additions to our current collection.

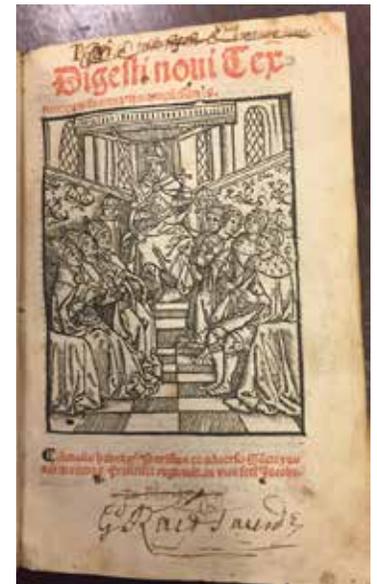


Voyage de la Louisiane, Fait Par Ordre du Roy en L'Annee Mil Sept Cent Vingt...

This book was a product of the first detailed survey made of Louisiana by the French Government, in the course of a scientific expedition under the command of Vallette Laudun in 1720. This was three years after the founding of New Orleans and at the height of John Law's Mississippi Company. This book describes in detail the physical geography of the French territories of Louisiana, and the Mississippi Valley, with particular focus on the ports of New Orleans and Pensacola. The book includes some of the most accomplished cartography of the Gulf Coast produced during that time.

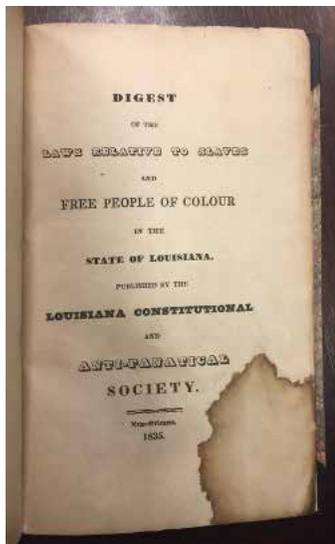
Digesti Novi Textus; Cum Summariis Amplissimis

The Law Library recently acquired Regnault's 1518 edition of the *Digestum Novum* of Justinian's *Digest* with notes by Accursius, who was the great medieval editor of the *Institutes*, *Code*, and *Digest* of Justinian. Summaries of each of the preceding titles are included in this edition as well. There are only four known copies of the 1518 Regnault edition in North America.

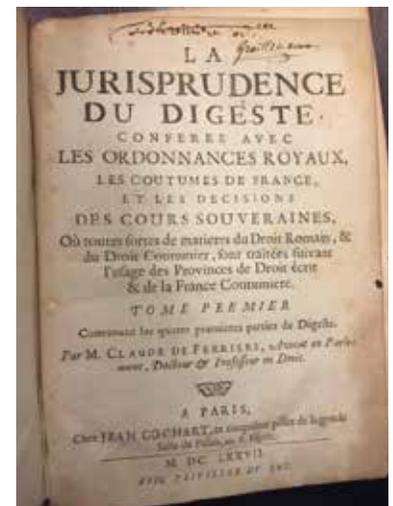


Digest of Laws Relative to Slaves and Free People of Colour

The Louisiana Constitutional and Anti-Fanatical Society published this scarce volume in New Orleans in 1835. This Digest to the Black Code was published in response to growing fears of a slave insurrection in Louisiana. Believing that northern abolitionists were intending to incite a slave revolt in the south, the Society formed in order to assemble local vigilance committees to enforce the state's Black Code. The Digest contains a synopsis of the then-existing laws pertaining to slaves and free people of color. The Digest begins with the Black Code date June 7th, 1806 and concludes with an amendment of the Black Code, dated March 25, 1831.



La Jurisprudence du Digeste, Conferee Avec les Ordonnances Royoux, Les Coutumes de France et les Decisions des Cours Souveraines, Ou Toutes Sortes de Matieres du Droit Romain, & du Droit Coutmier, Sont Traitees Suivant l'Usage des Provinces de Droit Ecrit & de l'Usage de la France Coutumiere. La *Jurisprudence du Digeste* is a first edition acquisition for the Law Library. This two-volume set is an exceptional work of comparative law that presents a title-by-title analysis of Justinian's *Digest* from the *Corpus Juris Civilis*. In addition, the work includes parallel comparisons to Roman law, contemporary civil law, royal decrees, and the customs in force in the different parts of France. There were later editions published in 1688 and 1733, but all editions are quite scarce.



NEW EXHIBIT ON JUDGE FRED J. CASSIBRY

by Brandon Wright



On the eve of the 2015 Fall Judge's Conference, the Law Library of Louisiana unveiled its newest exhibit in the Louisiana Supreme Court Museum: The Judge Fred J. Cassibry Exhibit.

Judge Fred J. Cassibry was born in D'Lo, Mississippi on September 26, 1918. Cassibry ultimately landed in New Orleans on a football scholarship offered by Tulane

University, a member of the Southeastern Conference (SEC). Cassibry earned both his B.A. and his L.L.B. from Tulane University and was admitted to the Louisiana Bar in 1944. Judge Cassibry was a World War II Veteran having served in the United States Navy from 1944-1946.

In 1954, Cassibry was elected to the New Orleans City Council, serving until 1960 at which time he was elected as Judge on the Orleans Parish Civil District Court. Judge Cassibry served on the Civil District Court until 1966 when President Lyndon B. Johnson appointed Cassibry lifetime tenure to the United States District Court of the Eastern District

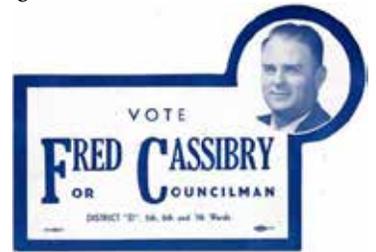
of Louisiana.

Judge Cassibry remained a dedicated public servant throughout his life. In commemoration of his public service, the Louisiana State Legislature passed Act 708 in 1999, officially establishing the city square block on which the Louisiana Supreme Court sits as Judge Fred J. Cassibry Square. In 2006, a dedication ceremony introduced two plaques commissioned by the Louisiana Supreme Court memorializing Cassibry's namesake square. The plaques were placed on the square in prominent positions on the corners of Royal and St. Louis Streets, and Chartres and Conti Streets and state, "Throughout his

forty years of public life, Judge Cassibry personified the definition of a dedicated public official. He never forgot he was a servant of the people."

Finally, and most importantly, thank you to Judge Cassibry's family for sharing their photographs and memories with the Law Library, enabling the exhibit to be possible. Learn more about Judge Cassibry in his exhibit. at the Louisiana Supreme Court Museum.

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CONDUCTING LEGISLATIVE HISTORIES WITH THE POYNTER LIBRARY

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professional development, library staff participated in two educational programs offered specifically to hone skills and improve best practices for Louisiana legislative history research.

The first program was conducted in November 2015 by Frances Thomas, Director of the Poynter Library. Ms. Thomas presented a program on compiling a legislative history for Louisiana laws. Her presentation included a step-by-step guide with current information on formats and coverage. Ms. Thomas underscored her observations on the issue of legislative intent. The ques-

tion of legislative intent often arises for scholars, the judiciary, and litigants. Ms. Thomas and her staff adhere to a strict definition of what can be included in a legislative history. In brief, they include only documents emanating from the legislative process. In other words, even though commentary, law review articles, newspaper or journal reports or the issuances from the Louisiana Law Institute may shed light on a particular statute, they are not considered a part of an official legislative history.

The second program took place in December when library staff travelled to Baton Rouge to tour the Poynter Library; meet their informa-

tion specialists for both the House and Senate libraries; and get "hands-on" with their electronic resources, including a database of current and past legislators. The Poynter librarians maintain a relatively small and specialized print collection. As with most libraries, current print resources are shrinking as electronic resources are expanding. These include digitized versions of the major components of the legislative process. During the legislative session, Poynter Library staff adopts an all hands on deck posture. Each specialist is assigned a subject area and ensures the most up-to-date information is available. At the end of the session, the staff

consolidates its information and collaborates with other state agencies to produce the official record of a session. Finally, Law Library staff examined the Poynter Library's bespoke database of current and past Legislators. This searchable database includes biographical information, dates of service, photos, Committee assignments and news and journal articles.

As our day ended, we made the obligatory visit to the site in the Capitol where Gov. Huey Long was shot. The sobering display was mitigated by seeing the Capitol in full holiday dress and taking a quick walk onto the beautiful Capitol grounds.

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FALL CLES AT THE LAW LIBRARY

by Miriam Childs



From left to right: Tulane University Law School Library Director Professor James Duggan, Bicentennial Historian of the Louisiana Supreme Court, Professor Warren Billings, and Loyola University College of Law Professor Ray Rabalais

This past fall, the Law Library sponsored or co-sponsored several CLEs that were free and open to the public.

Professor Warren Billings, Bicentennial Historian of the Louisiana Supreme Court, presented a CLE entitled "Habeas Corpus and Due Process, Too?: The Development of Criminal Law in Louisiana" on Friday, September 11, 2015. The program covered the origin of criminal law in Louisiana, including a discussion of key criminal statutes and treatises.

Louisiana was required to adopt the United States system of criminal law in order to be admitted as a state. Section 33 of "An Act for the punishment of crimes and misdemeanors" (1804) introduced English precepts of criminal jurisprudence into Louisiana law. Lewis Kerr's *An Exposition of the Criminal Laws of the*

Territory of Orleans (1805) expanded the 1804 Crimes Act with a discussion of the nature of the offenses listed in the act, a description of criminal procedure, and an appendix with sample writs, bonds, and other instruments. Edward Livingston was asked by the Legislature to compile a criminal code, published in 1821 but never enacted. Livingston's code is regarded as progressive for the era.

As criminal jurisprudence expanded, the need for acts and treatises increased. Robinson's 1841 *Digest of the Penal Law of the State of Louisiana* was the first compilation of criminal legislation. In 1855, the Legislature passed the Crimes Act, which for the first time provided a fundamental criminal procedural scheme. Albert Voorhies's *A Treatise on the Criminal Jurisprudence of Louisiana* (1860) replaced

Kerr's *Exposition*, and it wasn't until 1906 that Robert Marr's *The Criminal Jurisprudence of Louisiana* replaced Voorhies. An updated edition was published in 1923. From the 1920s-1940s, Louisiana's criminal code and procedure was published separately from the acts, but in the early 1950s, criminal law and procedure were folded into the new Revised Statutes.

Frederick W. Dingley, Reference Librarian at the College of William & Mary Law School, presented a CLE entitled "The *Corpus Juris Civilis*" on Thursday, November 12, 2015. Mr. Dingley gave an engaging, fast-paced presentation covering the origins of the *Corpus Juris Civilis* and its components. The program

was co-sponsored by the Supreme Court of Louisiana Historical Society.

The mid-11th century in Europe witnessed a revival of interest in Roman law, which led to the re-discovery of Emperor Justinian I's *Codex* from 528 A.D. Scholars at the University of Bologna spent two centuries adding commentaries applying laws from the Middle Ages to the *Codex*. In 1583 Godefroy produced the first edition of the *Codex* with the title of *Corpus Juris Civilis*, divided into the four parts known to modern scholars: Justinian's *Institutes*, *Code*, *Digest*, and *Novels*. The *Institutes* are a textbook for first-year law students; the *Code* is a compilation of excerpts from imperial constitutiones (legislative pronouncements)

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From left to right: Loyola University College of Law Professor Ray Rabalais, College of William & Mary Law School Reference Librarian Fred Dingley, and Supreme Court of Louisiana Historical Society Treasurer Benjamin Janke

FALL CLEs AT THE LAW LIBRARY (CONT.)

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back to Hadrian (117-138 A.D.); the *Digest* is a compilation of excerpted writings of jurists from the late Roman Republic to the early 3rd Century A.D.; and the *Novels* are unofficial posthumous compilations of Justinian I's constitutions. In the 1900s, German and English scholars continued studying and publishing translations of the *Corpus Juris Civilis*. Mr. Dingley simplified the *Corpus Juris Civilis* and made a confusing subject approachable.

On Friday, December 11, 2015, the Law Library co-sponsored a free CLE program with the A. P. Tureaud American Inn of Court. The professionalism program was presented by E. Phelps Gay, partner with Christovich Kearney, entitled "Abraham Lincoln: Lessons in Professionalism." Mr. Gay discussed the relationship between the words of Abraham Lincoln on professionalism and the language of the Louisiana Rules of Professional Conduct. The ethics program was presented

by Val Exnicios, Managing Counsel at Liska, Exnicios & Nungesser, entitled "Rules of Professional Conduct: Acts Prejudicial to the Administration of Justice (RPC 8.4)." These programs were the last CLEs of the year, and attendance was strong.

Stay informed on all of the library's upcoming CLEs and other events by signing up for our email list at lasc.libguides.com/content/newsletter.

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CONSTITUTION DAY 2015

by Miriam Childs



Constitution Day is celebrated every year on September 17 to commemorate the day the Founding Fathers signed the United States Constitution. All who visited the Louisiana Supreme Court on September 17 received a free pocket-size copy of the Constitution. The Law

Library prepared an exhibit featuring several books in its collection about the Constitutional Convention and the men involved in drafting the document.

The Constitution established the framework of United States government, as well as the rights and freedoms enjoyed by present-day

citizens. The United States Constitution is one of the most influential legal documents in existence, and is one of the world's oldest surviving constitutions. It is a living document that is continually interpreted by the United States Supreme Court to adapt to modern day problems and issues. However, the underlying concepts of the Constitution have remained virtually unchanged and unchallenged, which attests to its wisdom and strength.

September 17, 2015 marked the 228th anniversary of the Constitution's signing. Constitution Day is an appropriate day to reflect upon the meaning of being an American citizen.

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LIBRARY ANNOUNCEMENTS

Staff Changes

The Library is excited to introduce the two newest additions to the library- Cynthia Jones and Brandon Wright. Cynthia joins us after 21 years as Director of Library and Information Services at Phelps Dunbar. Brandon, formerly a student worker, was promoted to a full-time librarian position when she graduated with her J.D. from Loyola in the fall. She is also currently in the M.L.I.S. program at Florida State University. The library was saddened to lose Jennifer Creevy, who left for a new position at Holy Cross College. Daphne Tassin also retired from the library after seven years of service. We wish them both all the best.



Cynthia Jones (left) and Brandon Wright (right)

Upcoming Events

The Law Library is delighted to welcome Professor Evelyn Wilson to speak on "A Historical Look at the Louisiana Supreme Court from 1865 to 1880", based on her recent book, *The Justices of the Supreme Court of Louisiana, 1865-1880*. This free CLE, open to the public, will be on February 22nd at noon. Pre-register by emailing [Gail Bragg at gbragg@lasc.org](mailto:gbragg@lasc.org).

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