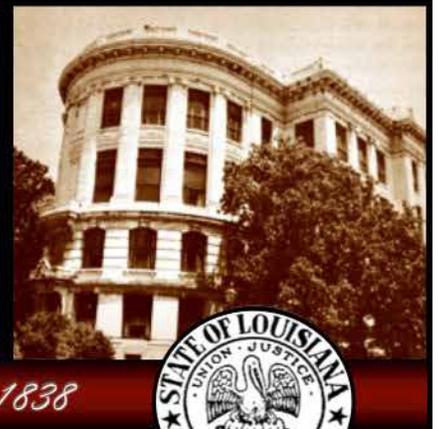




DE NOVO

The Newsletter of
The Law Library of Louisiana



Volume 15, Issue 2

Serving Louisiana Since 1838

HAITIAN ATTORNEYS VISIT LASC

by Miriam Childs

The Louisiana Supreme Court hosted a meeting on April 3, 2018 between a delegation of attorneys from the Port-Au-Prince Bar Association, led by Bâtonnier (Bar President) Stanley Gaston, and the Louisiana State Bar Association (LSBA). Also present at this historic meeting were Chief Justice Bernette J. Johnson; Chief Judge Carl E. Stewart of the U.S. Fifth Circuit Court of Appeals; LSBA President Dona K. Renegar; Warren Perrin, Chair of the LSBA Francophone Section; and business and cultural leaders representing the New Orleans Haitian community.



From left to right: Chief Justice Bernette J. Johnson, Louisiana Supreme Court; Port-Au-Prince Bar President Stanley Gaston; and Louisiana State Bar Association President Dona K. Renegar

Mr. Gaston reached out to the LSBA to begin a partnership between the Association and the Congress of the International Conference of Bar Associations of Common Legal Tradition (CIB). Mr. Gaston noted the shared French history between Louisiana and Haiti and indicated a need for diversity within the CIB membership.

A tour of the Supreme Court building preceded the meeting. The Law Library of Louisiana prepared for the distinguished visitors by selecting rare books about Haiti from its collection, some of which are owned by just a few libraries worldwide. Of particular

interest to Mr. Gaston were *Traité d'économie politique et de commerce des colonies*; the 1804 *Code Civil Français*; *De la législation et de l'administration des colonies*; and *Mémoire historique et politique sur la Louisiane*.

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NEW EXHIBIT ON COLONIAL LAW IN NEW ORLEANS

by Tara Cunningham

The year 2018 marks the 300th anniversary of the founding of New Orleans, and, like many institutions in the city that are marking the occasion, the Law Library has designed an exhibit on the colonial law of the city from 1718-1803. The exhibit, *Colonial Law in New Orleans: Olde World Law in a New Land*, was unveiled on June 12th in the Louisiana Supreme Court Museum, right after the CLE program “The Louisiana Colonial Documents Digitization Project” presented by Howard Margot.

Although our state and our legal system are very much a part of the United States, a look back at how the Louisiana legal system developed is both intriguing and perplexing. Unlike the other 49 states that are governed by common law, Louisiana remains a civil law state, which can all be traced back to the “recalcitrant independence” of the people who settled the land and lived under French and Spanish rule before becoming a territory of the United States and then the 18th state in 1812.

Our exhibit begins in 1718 with the founding of the city of New Orleans for the key reasons of geography and business. The French colonists at Biloxi and other settlements had difficulties with coastal storms, provisions, and poor soil for farming. Not only had the colony failed to make a



“Le Commerce que les Indiens du Mexique Font avec les François au Port de Missisipi,” courtesy The Historic New Orleans Collection, acc. no. 1952.3. In order to inflate share prices for his Company of the West, John Law made wild claims about the bounty and majesty of his Louisiana colony. This widely circulated “advertisement” depicted the Louisiana colony as a European paradise.

profit, but a prior managing company had lost one million livres on its concession. The Commandant-General of Louisiana and a director of the new Company of the West, Jean-Baptiste Le Moyne, Sieur de Bienville, chose a location that was on a major river 33 leagues from the Gulf of Mexico, with fertile soil, and by a path to Lake Pontchartrain. In 1719 the Crown and Company created the Superior Council, composed of Bienville and eight others, to govern the colony. Colonists had to buy all needed goods from the Company; trade with outsiders was prohibited. The Superior Council followed the laws of the *Custom of Paris*. In addition to regular governing, the Council acted as investigator, prosecutor, jury, and

judge in all civil and criminal matters.

In 1762, France ceded Louisiana to her ally Spain by a secret treaty, the Treaty of Fontainebleau, on November 3. The unsuccessful colony was costing the crown too much. Spain did not immediately take possession. Until the first Spanish governor arrived, France continued to manage the colony, and French law remained in force. By the time the first Spanish governor, Don Antonio de Ulloa, arrived in 1766, the colonists had harbored four years of growing resentment against the coming change in government. King Charles III had instructed Ulloa to leave the administration and laws of the colony as they were. A group of local leaders revolted against

economic changes Governor Ulloa proposed and in 1768 expelled him from the colony.

In 1769, Lt. General Alejandro O’Reilly arrived in New Orleans with a large Spanish fleet and nearly 2,000 soldiers. O’Reilly swiftly had the leaders of the rebellion against Spanish authority arrested and tried for their crimes. Five were put to death and six others given lengthy prison sentences. The Spanish flag now flew over Louisiana.

Although O’Reilly stayed only until the spring of 1770, he quickly completed a reorganization of the Louisiana colony while he was governor. O’Reilly issued an ordinance in November

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NEW EXHIBIT ON COLONIAL LAW IN NEW ORLEANS (CONT.)

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1769 ending French rule and marking the beginning of Spanish governmental systems. His proclamation was issued in French and in Spanish. This ordinance became known as O'Reilly's Code, which provided an organization for efficient government and administration of justice in accordance with Spanish laws such as the

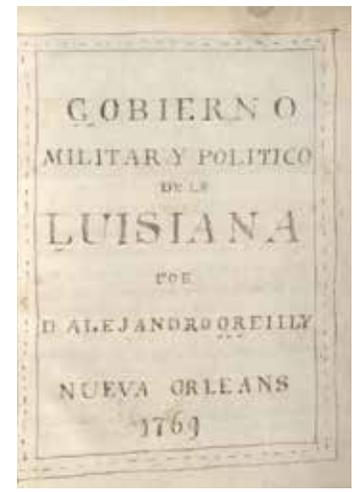
Recopilación de Castilla (also known as the *Nueva Recopilación*) and the *Recopilación de las Indias*. The ordinance was like a code of practice. Louisiana was to be governed by the same laws and system of judicial administration as the other Spanish possessions in America.

The Spanish legal system in New Orleans differed

in several respects from the French system. The Spaniards introduced more courts and judges than the single court of the French Superior Council. Spanish legal codes were based on Roman law while French law was founded on the *Coutume de Paris*, which in turn was based on Roman law.

O'Reilly's proclamation abolished all French laws except the *Code Noir*, which regulated the treatment of slaves. Although the harshness of Spanish criminal law is exemplified in capital cases, which allowed death by burning, decapitation, hanging or wild beasts, the Black Code, which regulated the treatment of slaves, was more permissive than the rest of the Southern states. The ability for slaves to buy their freedom and for owners to free their slaves were rights only found in the Louisiana colony. This led to Louisiana's large free people of color population, which was more than nearly all the other Southern states combined.

O'Reilly's Code replaced the French Superior Council with a Cabildo composed of six perpetual *Regidores*, two Ordinary *Alcaldes*, an Attorney-General-Syndic and a Clerk. Each of the *Alcaldes* acted as a judge within New Orleans in all civil cases, and in some criminal cases when the defendant was not under the privilege of trial by a military judge or an ecclesiastical judge. In minor cases, the judgment

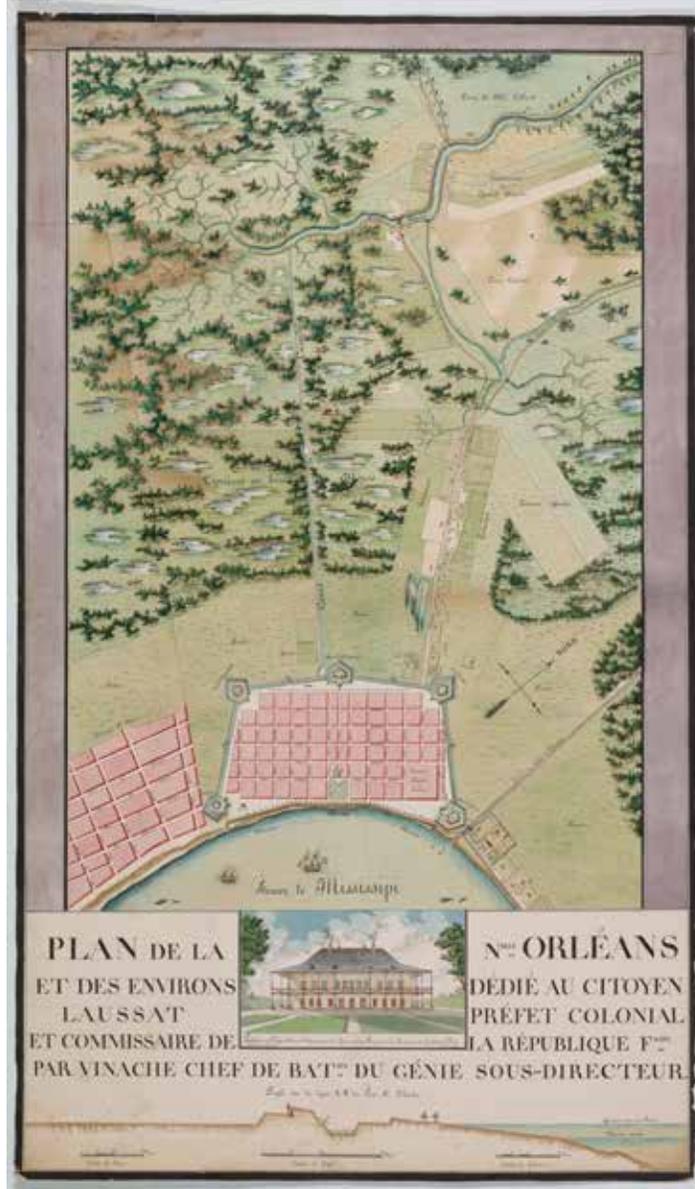


"The Ordinances of O'Reilly," courtesy Tulane University Rare Books. His ordinances of instructions on civil procedure had a huge impact on the new Spanish colony. He not only replaced all existing French law with Spanish law, but, in so doing, also transformed Louisiana into a colony governed by the same justice system as all other Spanish colonies in the Americas.

of the *Alcalde* was final. Appeals were heard by a three-judge court composed of two *Regidores* and the trial *Alcalde*. In areas outside the city military judges, with the assistance of syndics, served as inferior courts with jurisdiction similar to that of the Ordinary *Alcaldes* in the city. These judges also served as notaries. In all cases, the Governor-Intendant held final authority. However, the French colonists or the *ancien population* in Louisiana still held firm to French law and custom as much as possible by settling matters extrajudicially according to prior law.

Spanish rule lasted until 1803, even though Louisiana was retroceded by Spain

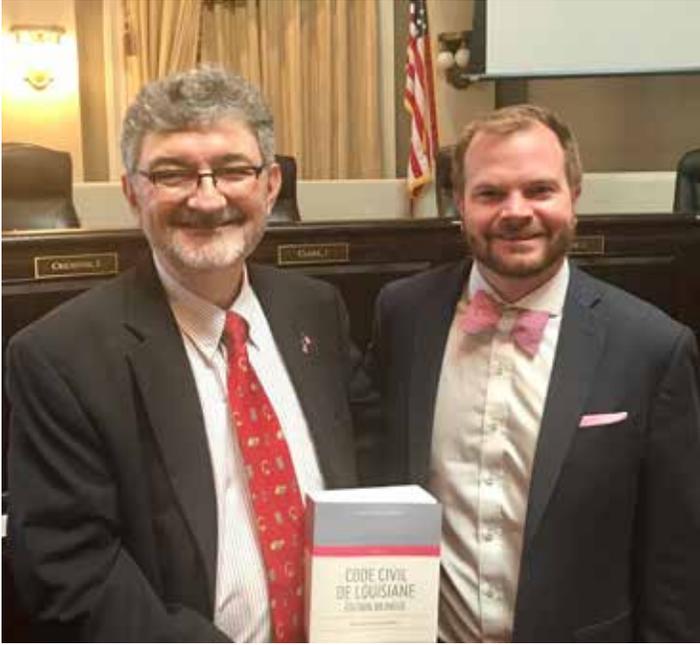
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"Early Plan of New Orleans," courtesy The Historic New Orleans Collection, acc. no. 1987.65 i-iii. This early plan of New Orleans shows the importance of its location. Seafaring ships came into Lake Ponchartrain via the Rigolets, and smaller craft then transferred cargo down the bayou to a point where it was carried overland to the town.

CLE ON CODE CIVIL DE LOUISIANE, ÉDITION BILINGUE

by Miriam Childs



Professor Oliver Moréteau (left) and Supreme Court of Louisiana Historical Society Treasurer Benjamin W. Janke (right).

After almost 150 years, the Louisiana Civil Code once again can be read in French. Professor Oliver Moréteau, Assistant Dean and Director of LSU's Center of Civil Law Studies, presented a CLE program on the newly published *Code Civil Louisiane, Édition Bilingue* at the Louisiana Supreme Court on April 24, 2018. The CLE was sponsored by the Law Library of Louisiana and the Supreme Court of Louisiana Historical Society.

Professor Moréteau discussed several reasons for undertaking the task of translating Louisiana's current Civil Code, which dates to 1870, into French. The project provided the opportunity to explore the validity and vitality of the civil law in English, thus helping to bridge the civil law-common law divide.

Such a project also helps to facilitate law reform in Francophone countries of the world. Also, he argued, the linguistic rights of the French-speaking population in Louisiana must be considered.

With a grant from the Université de Nantes, Professor Moréteau assembled a team of 14 interns from Nantes, 3 research associates, and 3 visiting scholars to perform the translation. The work of translation consisted of numerous translation meetings, cross-revision, editing, and uploading the final work product into the Louisiana Civil Code Online. The team utilized legal dictionaries such as *Vocabulaire juridique Cornu*; *Dictionary of the Civil Code*; *Black's Law Dictionary*; and *Dahl's Law Dictionary*. General diction-

aries like the *Oxford English Dictionary* and *Harrap's* were also consulted. Critical to translation work were earlier Louisiana civil codes, the civil codes of France and Québec, and online resources like *Linguee*, which includes over a million translations from English to French.

Until the Civil War, legal texts in Louisiana were published in French and English. The *Digest of 1808* represents the compilation of laws in effect in the Orleans territory, and became the world's first source of civil law in English. Louisiana's 1825 Civil Code was drafted in French first and then poorly translated into English, which necessitated the designation of the French version as the official version. The 1870 Civil Code was a revision of the 1825 Civil Code minus the articles dealing with slavery. The 1870 version was published only in English, until now.

Professor Moréteau discussed the complexity of translation work, especially with a text that has had over 200 years' worth of drafting. He said that the translation must be faithful to the original text; legal translation, especially legislation, must be exact; and there can be no disclaimers since not only scholars but also practitioners will use the work, and it will be cited in courts. He commented that the work of translation is an exercise in both linguistics and legal history.

Professor Moréteau said the articles of the Louisiana Civil Code fell into three categories: articles unchanged, or slightly changed, since 1808/1825; revised articles in civil law style; and common law statute additions. Each category required a different translation approach. For unchanged or slightly changed articles, the original French needed to be revived. In case of doubt regarding meaning, the French is the authority. For revised articles in civil law style, the spirit of the Code is what the translator is looking for. If the source text is ambiguous, then the translation must be also. For the common law additions, the translator has to translate everything, even repetitive words. Professor Moréteau cautioned against continued common law intrusions upon the Louisiana Civil Code. "The verbose letter kills the spirit," he said. Too much statutory language changes the nature of the Louisiana Civil Code as a codification.

Professor Moréteau is looking next to translate the Louisiana Civil Code into Spanish. "Laws and codes are made for the citizens, not for the lawyers," he said. He also said that a law that is hard to translate is a poorly written law. All versions of the Louisiana Civil Code, including the new French version, can be found on the Center of Civil Law Studies website at www.law.lsu.edu/clo/louisiana-civil-code-online/.

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NEW EXHIBIT ON COLONIAL LAW IN NEW ORLEANS (CONT.)

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to France in 1800, according to the Treaty of San Ildefonso. When Spain acquired Louisiana it was a small, unprofitable colony of less than 7,500 inhabitants. By 1803, there were over 50,000 people living in the prosperous colony. The French in Louisiana never adopted the Spanish language or ways and customs, but they owed a debt to the hardworking Spanish governors under whom the Spanish system of government was administered fairly to all.

Pierre Clément de Laussat was appointed by Napoleon to be Colonial Prefect of Louisiana in 1802, but did not arrive until 1803. During his time in New Orleans, Laussat abolished the Cabildo and its judicial authority. In its place he substituted a municipality consisting of a mayor and other officers, but the municipality wasn't imbued

with judicial power. He also decreed that the *Code Noir* was in effect. In August, he was notified that France was ceding Louisiana to the United States. On November 30, 1803, he officially received the colony from Spain. Three weeks later, on December 20, he transferred Louisiana to the United States commissioners, Claiborne and Wilkinson.

When it came to meeting the requirements of statehood, the *ancien population* in the territorial legislature made their voices heard in a manifesto declaring that civil law should remain the law of the land, even when the territory became a state. Thanks to them and the support of Edward Livingston, the civil law tradition has remained the law of Louisiana.

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Pierre Clément de Laussat, from Law Library of Louisiana's Rare Book Collection, Alcee Fortier, History of Louisiana, v. 2. Laussat came to Louisiana as Napoleon's representative before the transfer from Spain to France. He served as interim governor from Nov. 30 to Dec. 20, 1803. Within weeks, Napoleon changed his mind and ordered negotiations to sell the territory to the United States.

HAITIAN ATTORNEYS VISIT LASC (CONT.)

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Mr. Gaston said, through an interpreter, that Haiti, as a former French colony, is interested in the scholarship of the lives of enslaved persons. He added that without historic material for conducting research in Haiti, they've "never seen original books that illustrate our shared judicial traditions." They wish to study such texts and share this information.

President Renegar was supportive of the LSBA/

CIB partnership, describing it as a way to preserve Louisiana's French-speaking heritage and its historic ties to Haiti. "The connection between Haiti and Louisiana cannot be overstated," said Chief Justice Johnson.

Mr. Gaston will continue to direct partnership efforts throughout the upcoming year. A meeting between the LSBA Francophone Section and the CIB will be held in New Orleans later in 2018.

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CHIEF JUSTICE BERMUDEZ DESCENDANTS VISIT

by Miriam Childs



Descendants of Chief Justice Bermudez gather around his portrait. From left to right: Walker Stinson, Karen Stinson, and Charles Ledoux.

A great-grandson of former Louisiana Supreme Court Chief Justice Edouard E. Bermudez, Charles J. Ledoux, visited the Louisiana Supreme Court on May 14, 2018. Chief Justice Bermudez served on the Louisiana Supreme Court from April 5, 1880-April 5, 1892. Accompanying Mr. Ledoux on the trip from Monroe, Louisiana were Ann Ledoux, his wife; Karen Stinson, his daughter; and Walker Stinson, his grandson. Karen Stinson and Walker Stinson are the great-great-granddaughter and great-great-great-grandson of Chief Justice Bermudez.

Library Director Miriam Childs greeted the Ledoux family. She showed them the location of Chief Justice Bermudez's portrait in the museum, and the family posed for photos with the portrait. Mr. Ledoux had wanted to visit the Court and view the portrait because the one that belonged to his family was destroyed in a fire. Mr. Ledoux's father, Charles LeDoux, moved from New Orleans to Monroe in 1927. He changed the spelling of the family name to Ledoux.

Mr. Ledoux and his family also took the opportunity to view and take photos with the portrait of Joachim Bermudez, Chief Justice

Bermudez's father, located on the second floor. Joachim Bermudez was a judge in Orleans Probate Court. They had been unaware of this portrait and were thrilled to learn more about their family's history. The library Director gave a brief tour of the Rare Book Room, during which she showed them a volume that belonged to Joachim Bermudez, which had originally belonged to William C. C. Claiborne, Louisiana's first governor.

Chief Justice Edouard Bermudez was born in New Orleans on January 19, 1832. He graduated from Spring Hill College in Mobile, Alabama in 1851, and then studied common law at the home of U. S. District Judge Thomas B. Monroe in Kentucky. Bermudez returned to Louisiana to study civil law in the Law Department at the Univer-

sity of Louisiana, earning an L.L.B. in 1852. He was admitted to the bar in 1853. During the Civil War, Chief Justice Bermudez served as a Judge Advocate in Mobile. After the War, he was elected Assistant City Attorney of New Orleans, but returned to private practice after opposition from the Reconstruction government. Bermudez was appointed Chief Justice in 1880 and served all 12 years, despite ill health in his later years. He died on August 22, 1892, and is interred in St. Louis No. 3 Cemetery. He married Elizabeth Amanda Maupassant, and the union produced 9 children, though some didn't survive childhood. Chief Justice Bermudez is credited with starting the Louisiana Supreme Court's portrait collection, most certainly appreciated by the Ledoux descendants. δ



LAW DAY - SEPARATION OF POWERS: FRAMEWORK FOR FREEDOM

by Sara Pic



Law Library Director Miriam Childs presents to students from Landry-Walker on the importance of separation of powers under our Constitution.

The theme for Law Day 2018 was *Separation of Powers: Framework for Freedom*. Law Day is held annually on May 1st as a celebration of the rule of law. Each year's theme is chosen by the American Bar Association, often reflecting on timely topics in law.

The library prepared four exhibit cases, located in front of the library Information Desk, on this year's theme. Each case takes a closer look at the theme, such as examinations of James Madison's pronouncements on the importance of separation of powers in the *Federalist Papers* and of the (dubious) constitutionality of Franklin Delano Roosevelt's "court-packing" scheme. This year's theme particularly asks us to think critically about executive power, and the

importance of separation of powers as a bulwark against a tyrannical ruler.

This year also marks the 60th anniversary of Law Day. Law Day was first envisioned in 1958 as a day primarily to trumpet the rule of law against the then-threat of communism. Law Day occurs on the same day as May Day, an annual celebration of workers. Law Day instead asks us to reflect upon every American's rights as laid out in the fundamental documents of American democracy: the Declaration of Independence and the United States Constitution.

This year the Law Library welcomed nearly seventy students and teachers from McDonogh 35 and Landry-Walker high schools. The students were able to view Louisiana Supreme Court

oral arguments and then heard from speakers from the Court staff. After viewing the exhibits in the museum and in the library, the students engaged in an exercise with Law Library Director Miriam Childs. Students analyzed Harry Truman and the "steel seizure" case and discussed why the U.S. Supreme Court found Truman's actions to be an unconstitutional use of executive power. Though Truman tried to justify his taking of the private steel companies as part of his war-time powers (as steel was badly needed during the Korean War), the Court found that unpersuasive.

The library's Law Day exhibits on separation of powers will remain open to the public until next Law Day in 2019.

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LIBRARY ANNOUNCEMENTS

Library Outreach

The library was very busy with outreach across the state this spring. The library staffed a booth at the 11th annual Solo, Small Firm & Tech Conference in New Orleans. This year's raffle item was a copy of the *Code Civil de Louisiane, Édition Bilingue*. The library also staffed a table at the Spring Judges Conference in Lafayette and the Justices of the Peace and Constables Conference in Marksville.

The library was honored to present to the Self-Represented Litigant Service Provider Summit, organized by the LSBA, on how we help people representing themselves without an attorney.



From left to right: Rachael Mills, LSBA Access to Justice Project; Dave Lanser, Louisiana Civil Justice Center; Michael Schachtman, LSBA Access to Justice; and Sara Pic, Law Library of Louisiana

The library also once again partnered with the LSBA at the annual Louisiana Library Association conference in Alexandria.

De Novo in HeinOnline

The full archives of *De*

Novo are now available in HeinOnline. In HeinOnline, you can search by keyword across all issues. HeinOnline can be accessed in the Law Library or anywhere that has a subscription, such as a law school or law firm.

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