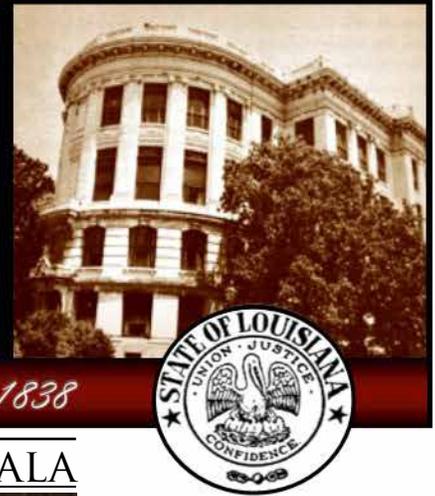




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The Newsletter of  
The Law Library of Louisiana



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## SCLAHS NEW ORLEANS TRICENTENNIAL GALA



*Left to right: Louisiana Supreme Court Justice Jefferson Hughes, United States Court of Appeals for the Fifth Circuit Chief Judge Carl Stewart, Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, Louisiana Supreme Court Justice Scott Crichton, and Louisiana Supreme Court Justice James Genovese*

by Miriam Childs

The Supreme Court of Louisiana Historical Society (SCLAHS) didn't want 2018 to pass without doing its part to commemorate the City of New Orleans Tricentennial. In the fall of 2017, the SCLAHS Board created

a Tricentennial Gala Committee, co-chaired by Board members Secretary Paul R. Baier and Catherine J. Newsome, to plan an event to ensure that the judiciary was represented among the many citywide celebrations.

The Tricentennial gala

was held on the evening of Saturday, September 29, 2018 at the Orpheum Theater in New Orleans, in conjunction with the opening of the Louisiana Judicial College's Fall Judges Conference. The gala's theme was "honoring the

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# SCLAHS NEW ORLEANS TRICENTENNIAL GALA (CONT.)

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state's judiciary, celebrating the Tricentennial of the City of New Orleans, the Red Mass, and the history of the Louisiana Supreme Court." Guests of honor included retired Louisiana Supreme Court justices and Louisiana's judiciary.

A cocktail reception started the evening, with greetings afterwards delivered by SCLAHS Secretary Paul Baier. SCLAHS Board President Donna D. Fraiche provided an introduction to the historic evening, thanking the sponsors and recognizing guests of honor. Chief Justice Bernette J. Johnson welcomed the audience



*Left to right: SCLAHS President Donna D. Fraiche, Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, and Tulane Law School Dean David D. Meyer*

and introduced the keynote speaker, Chief Judge Carl E. Stewart of the U. S. Fifth Circuit Court of Appeals. Chief Judge Stewart reflected candidly upon his journey to his current position, highlighting the judiciary's

growth and development amid the continual change of the meaning of "justice."

The Gala Committee Co-Chair Catherine Newsome followed the keynote address, announcing

the cutting of the Tricentennial gala cake and the opening of the dance floor. Guests spent the rest of the evening socializing, dancing, and enjoying the entertainment provided by Jerry Christopher's X-Ceptions. There was no doubt that the celebration of the Tricentennial wouldn't be complete without recognizing the contributions and critical role the judiciary has played in the development of the city. By all accounts the evening was a rousing success. Attendees were treated to an inspirational evening that demonstrated why the judiciary is an esteemed part of society.

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## CHIEF JUSTICE PASCAL F. CALOGERO, JR.: LEADING BY EXAMPLE

*by Miriam Childs*

Louisiana lost one of its greatest lights with the passing of Louisiana Supreme Court retired Chief Justice Pascal F. Calogero, Jr., on December 20, 2018, at the age of 87. Chief Justice Calogero was the longest-serving justice in the history of the Louisiana Supreme Court, serving for 36 years, from January 10, 1973 to December 31, 2008. He served as Chief Justice for 18 years, from April 1, 1990 to December 31, 2008.

A native of New Orleans, Chief Justice Calogero earned his law degree from Loyola University New Orleans College of Law in 1954, graduating first in his class and serving as President of the Student Editorial

Board of the *Loyola Law Review*. In 1992, he received a Master of Laws in Judicial Process from the University of Virginia. Chief Justice Calogero served in the U.S. Army from 1954-1957, first as a military police officer, and then as a "JAG" in the Judge Advocate General's Corps. Prior to practicing law, Chief Justice Calogero worked as a law clerk at Orleans Civil District Court.

In 1958, he formed the law firm of Landrieu, Calogero & Kronlage with life-long friends Moon Landrieu and Charles A. Kronlage, Jr., and continued in private practice until 1972, when he was elected to the Louisiana Supreme Court from the First Supreme Court District. Chief Justice Calogero didn't allow the lack

of prior judicial experience deter him from running for the seat, saying "a special contribution can be made by a man of law moving directly from experience in both civil and criminal trials to a position on Louisiana's highest court." From the start, Chief Justice Calogero made the improvement of the administration of justice in Louisiana his top priority.

Chief Justice Calogero was re-elected in 1974, 1988, and 1998, three hard-fought and difficult campaigns. During his historic tenure on the Supreme Court, Chief Justice Calogero authored over 1,000 learned majority opinions, concurrences, and dissents, including numerous historic and groundbreaking decisions, and participated in over 6,000 oral arguments.

His opinions and writings reflected his intellect, his integrity, his respect for the rule of law, and his passionate dedication to fairness and justice.

Chief Justice Calogero's influence on the Louisiana Supreme Court and the administration of justice in the state can't be overstated. He implemented improvements to court access; case-load management; judicial campaign finance reform; attorney and judicial discipline; and, perhaps most importantly, improving indigent defense in Louisiana with the establishment of the Indigent Defender Board (now the Louisiana Public Defender Board). Chief Justice Calogero also created the Louisiana

*continued on page 3*

# CHIEF JUSTICE PASCAL F. CALOGERO, JR.: LEADING BY EXAMPLE

*continued from page 2*

Supreme Court's Community Relations Department and the Case Management Information System, which collects criminal dispositions to make them available to the judiciary.

Chief Justice Calogero's unwavering leadership enabled the Louisiana Supreme Court to return to its historic location at 400 Royal Street. The courthouse had fallen into disrepair, but he held fast to a vision of returning the Court to a renovated and updated structure. In May 2004, the vision was realized, when the Louisiana Supreme Court, Clerk's Office, Judicial Administrator's Office, Law Library, and Fourth Circuit Court of Appeal moved into the newly renovated building, to great fanfare.

Chief Justice Calogero's numerous accolades and awards include the Louisiana Bar Foundation's 1991 Distinguished Jurist Award; an honorary Doctor of Laws degree from Loyola University School of Law; induction as an honorary member of LSU Law Center's Order of the Coif and Hall of Fame; the Justice Albert Tate, Jr. Award from the Louisiana Association of Criminal Defense Lawyers; and the distinguished Medal of Honor Award from the Mayor of New Orleans. In 2007, the American Judicature Society, a national nonpartisan organization dedicated to the effective administration of justice,



*From left to right at the Louisiana Supreme Court Law Clerks Reception (January 15, 2016): former Louisiana Supreme Court Chief Justice Pascal Calogero, LSU Law Center Professor Paul Baier, Louisiana Supreme Court Justice John Weimer, former U.S. Ambassador Grover Rees, and Louisiana Supreme Court Justice (retired) Jeffrey Victory*

awarded Chief Justice Calogero the Dwight D. Opperman Award for Judicial Excellence. He continued to receive honors after his retirement in 2008, including the Louisiana Association of Criminal Defense Counsel's Lifetime Achievement Award; the *Integritas Vitae* Award, Loyola University's highest honor, given to individuals who possess a high moral character in a lifetime of service; and the ACLU's Ben Smith Award for his commitment to the advancement of civil liberties in Louisiana. Additionally, the Louisiana Bar Foundation instituted the Calogero Justice Award, which is awarded annually to recognize significant contributions to the Louisiana justice system.

Upon learning of his death, Chief Justice Bernette

Joshua Johnson commented, "Today we lost a giant in our legal profession. I served with Justice Calogero for fourteen years on the Supreme Court, and during that time, I developed a deep respect for my colleague's intellect, his integrity, and his dedication to fairness and justice. His contributions to Louisiana law and judicial administration are immeasurable." Louisiana's judiciary benefitted from Chief Justice Calogero's courage to lead by example in the face of opposition. He will be greatly missed by the Louisiana legal community and far beyond.

(sources: *Guide to the Louisiana Judiciary* (1995); Louisiana Supreme Court press release - [www.lasc.org/press\\_room/press\\_releases/2018/2018-14.asp](http://www.lasc.org/press_room/press_releases/2018/2018-14.asp))

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# CLE WITH CHRISTOPHER PEÑA ON ORLEANS DA ASSASINATION

by Cynthia Jones



Christopher Peña speaks on his newest book at the Louisiana Supreme Court.

On November 28, 2018, Christopher Peña returned to the Louisiana Supreme Court to offer a one-hour CLE, co-sponsored by the Supreme Court of Louisiana Historical Society, based on his latest book, *Death Over A Diamond Stud: The Assassination of the Orleans Parish District Attorney* (Pelican Publishing Company, 2018). Like his previous CLE based on his earlier work, *The Strange Case of Dr. Etienne Deschamps: Murder in the New Orleans French Quarter*, Peña's latest work takes a sensational true crime event and follows it through to its conclusion – in this case a criminal trial, conviction, appeal, and ultimately execution by hanging.

Violence and murder have long been part of the New Orleans urban life. However, when Lewis Lyons repeatedly shot and killed J. Ward Gurley, Jr. in July of 1903, the city was stunned. Flamed by tabloid-like coverage in

the city's newspapers, the matter gripped the public's imagination and passions. Neither Gurley nor Lyons were unknowns. Gurley was a notable member of the New Orleans bar. He came from an established family; he was well-educated and highly-regarded in the legal community. Not only did he have a thriving private law practice, he held political office as the District Attorney and recently was appointed federal prosecutor. While Lyons did not enjoy the same successes of Gurley, he had a relatively stable childhood; received a good secondary school education; he was married with a family; and for a while, enjoyed a life on sound financial footing through steady employment, and even forays into private business and small real estate transactions. Lyons's world began to unravel when he was falsely accused and arrested for theft – the diamond stud. His name was eventually cleared through a series of complex judicial proceed-

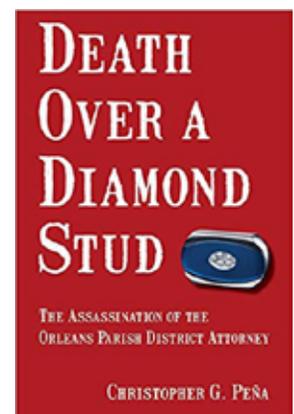
ings. Even so, he could never shake the stigma and was increasingly obsessed with the thumping he took in the local press. Further, when he attempted to retaliate against his accusers in subsequent legal proceedings, he was unsuccessful. Oddly, he did not focus on his accusers but blamed his legal counsel, Gurley. Tragically, his obsession with Gurley and the perceived mishandling of his case, ended badly for both men: Lyons brutally murdered Gurley and, in turn, was executed for his crime.

Peña is a master of historical detail. Painting detailed word pictures, he walked the audience down the streets of early 20th century New Orleans, into the municipality's newly-built multi-storied office buildings, through the police station and prison, into Charity Hospital, and importantly, the criminal courthouse. His remarks included the retelling of the crime – complete with the onsite autopsy of the victim, Lyons's self-inflicted injuries, his arrest and confinement, and a description of the prison, including various cells and the prison yard. He continued with a detailed discussion of execution by hanging: the public nature of executions, the selection of an executioner via job applications and individual interviews, and the mechanics of death by hanging. In his book, Peña also delves deeply into Lyons's arrest, the medical treatment of his rather serious self-inflicted

head wound, contemporary thoughts on insanity, and most importantly, the details of his prosecution and defense. As revealed in the book, Lyons was well represented by appointed counsel, Edward Joseph Generally. Generally's attention to the case was tireless and highly professional. His defense of Lyons was skilled and sophisticated.

This CLE provided a 10,000-foot view of the Gurley-Lyons event. Even so, a modern-day lawyer would be very interested in Peña's detailed description of a trial in criminal court circa 1900: the judges, their dockets, the criminal bar including defense and prosecution, the jury selection and deliberation, the familiar interplay between the judges and attorneys once court is adjourned, post-resolution entities such as the appeals process, Pardon Boards, *ad hoc* commissions used to establish nettlesome questions of experts, and the intervention of the Governor in capital matters. Anyone wishing to delve deeper is encouraged to read *Death Over a Diamond Stud*.

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# CLE WITH MICHAEL RUBIN ON PROFESSIONALISM

by Cynthia Jones

On December 6, 2018, Michael Rubin presented a one-hour program on professionalism as part of the annual A.P. Tureaud American Inn of Court CLE, co-sponsored by the Law Library. He opened his talk with remarks about Nazi-era Germany and pre-Civil War and Reconstruction-era Louisiana. He then asked, could present-day Louisiana lawyers resist authoritarian or unjust regimes if bound by the current Code of Professionalism?

Rubin discussed several well-known tenets of professionalism. He noted the ABA Model Rules of Professional Conduct are the source of the corresponding Louisiana, Mississippi, and Texas Codes of Conduct. These codes establish two fundamental principles: 1) lawyers are officers of the court and 2) lawyers may not counsel a client to engage in conduct the attorney knows is criminal or fraudulent and nor may they assist a client in such activity. Under the first principle, counsel cannot make a false statement of law or fact and cannot impugn the integrity of a judge. Federal courts have the inherent duty to punish these infractions even if the conduct does not violate state or federal law. To insure an attorney retains the ability to provide his client with full and robust representation, the second fundamental principle allows the lawyer to engage in a good-

faith effort to determine the validity, scope, meaning, and application of a statute.

Rubin asked the attorneys in the audience to suppose they were practicing attorneys in Nazi Germany – but bound by the current era’s Louisiana Code of Professional Conduct. The supposition continued with a potential client feeling the effects of the anti-Semitic statutes by which the German government first eliminated the protection afforded to Jews under civil law and then eventually criminalized nearly every aspect of Jewish culture and tradition. (Rubin pointed out that non-Jews also were impacted by the Nazi effort to eliminate all non-German elements from its new society.) As an illustration, Rubin asked rhetorically what advice a lawyer might provide to a Jewish merchant whose store was seized under a statute that did not require compensation; what advice could the lawyer give to the family of a man imprisoned for the crime of homosexuality; and what relief could an attorney offer a litigant exoriated by a judge who then ruled against him merely because he was Jewish.

Rubin posited that an answer of “There is nothing that can be done” is entirely unsatisfactory because the “first principle” underlying all codes of professionalism is the idea of justice. Citing a district court opinion authored by his father, *U.S. v. McDaniel*, 379 F.Supp



*Michael Rubin speaks at the annual A.P. Tureaud American Inn of Court CLE at the Louisiana Supreme Court.*

1243 (E.D. La. 1974), Rubin noted the existence of an amorphous yet real concept of justice, and that the aim of all legal institutions is to achieve justice. Rubin argued this is a universal human feeling that is not exclusive to philosophers, lawyers, or judges. He went on to say that only in a fair and just proceeding can society legitimately call another human being to account. This concept of justice requires not only that the outcome of a procedure be objectively accurate, it must also be fair to such a degree that the proceeding is perceived by all who witness it as just.

In another surprising turn, Rubin took the gradual erosion of the rights afforded to Jewish lawyers, then Jews in general (in Germany) and compared these developments to the way black citizens in Louisiana were

gradually stripped of their civil rights and legal protection in pre-Civil War Louisiana – beginning first with infamous Code Noir. After describing the legal systems that enshrined anti-Semitism in Nazi Germany and race-based discrimination in pre-Civil War Louisiana, Rubin outlined the dangerous but ultimately successful efforts made by a few lawyers to oppose those regimes. Rubin found sanction for these actions in the fact that both Nazi Germany and pre-Civil War Louisiana lacked a strong, independent judiciary and an effective mechanism to challenge unjust laws. Rubin concluded his presentation with the observation that lawyers are obliged to respect a Code of Professionalism only when those rules are part of a system that furthers the cause of justice.

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# CLE WITH WARREN BILLINGS ON BOUVIER'S DICTIONARY

by Cynthia Jones

In 1998, Simon Winchester's *The Professor and the Madman* captivated readers with a fictional account of the making of the Oxford English Dictionary in the late 19th century. In September 2018, Professor Warren Billings recounted a similar – albeit factual – 19th century undertaking in his carefully researched program, *An American Original: John Bouvier and his Law Dictionary*. While Winchester's work fictionalized the interplay between James Murray, the British editor of the OED, and Dr. W. C. Minor (a prodigious although untethered and institutionalized American contributor), Billings's CLE focused on the individual labor of one man whose industry and intellectual rigor produced America's first legal dictionary. From the mid-1800 through the mid-1940s, *Bouvier's Dictionary* was to the legal community what *Black's Law Dictionary* is to attorneys today – an indispensable if not irrefutable reference. The story of the making of America's first legal dictionary and its creator is another compelling chapter in the development of American law book history.

John Bouvier immigrated to America under duress. He and his Quaker family fled France after the violence and chaos of the French Revolution precipitated their own financial ruin. The family relocated to a French-speaking Quaker community

outside of Philadelphia. Soon after, Bouvier apprenticed to Benjamin Johnson, a printer, bookseller, and a member of the Quaker community. Bouvier proved an able student. Within five years, he established himself professionally and privately: he opened his own print shop, established a weekly newspaper, *The American Telegraph*, and married Elizabeth Middlefield, a member of the Quaker establishment. Bouvier soon turned his attention to the law. As custom dictated, Bouvier “read law” with Andrew Stewart. In short order, he became a member of the Pennsylvania bar. During this time, he made another

foray into the newspaper business with the purchase of *The Genius of American Liberty*, which he quickly combined with *The American Telegraph*. Even with the larger publication, newspaper publishing did not hold his interest. He sold the paper and devoted himself to his law practice – and more importantly, to writing and thinking about the law. His first publication was an edition of *Blackstone's Commentaries on the Law of England*, as applied to the developing jurisprudence of the new republic. What triggered Bouvier's desire to compile an American law dictionary is a mystery. However, once lit, the intellectual flame

took hold. Bouvier kept an arduous dusk-to-dawn work schedule in order to maintain his private law practice and work on the *Dictionary*. Even so, it took 10 years to produce the first edition of *A Law Dictionary Adapted to the Constitution and Law of the United States of American and of the Several States of the American Union*.

In an informative sidebar, Billings talked about the physical construction of the *Dictionary* in interesting detail (octavo formatting, wove paper, letterpress printing, and sheepskin binding with handsome red, black and gold finishes) and 19th century marketing practices (carefully placed, demonstrative and illustrated print advertisements). Finally, Billings spoke about the compilation of the *Dictionary*. The sheer number of the entries (individual words and phrases and over 800 abbreviations), the careful and subtle scholarship accorded each entry, and the unflinching effort Bouvier took to cross-reference entries and references is mind-boggling when one considers this was the work of one man. Billings concluded with a discussion of the success and widespread distribution and use of *Bouvier's Dictionary*. Even though Bouvier died suddenly in 1851 from a cerebral hemorrhage, the publication of the dictionary continued through the 1940s. A lively and engaging question and answer session followed Billings's remarks.

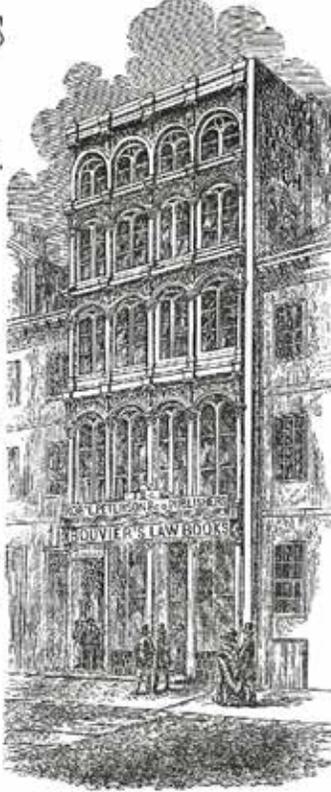
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## ASSOCIATION OF AMERICAN LAW SCHOOLS RECEPTIONS AT LASC

by Gail Bragg and Miriam Childs



Left to right: Supreme Court of Louisiana Historical Society (SCLAHS) Secretary Paul R. Baier, AALS Constitutional Law Section Chair Professor Shaakirrah R. Sanders, SCLAHS President Donna D. Fraiche, and Master Craftsman James Kelly

The Association of American Law Schools (AALS) held its annual conference in New Orleans January 2-6, 2019. Two AALS receptions were held at the Louisiana Supreme Court during the conference. The AALS Dean's Reception took place on the evening of January 3. Law school deans from around the nation and their guests were hosted by Dean Madeleine Landrieu of Loyola New Orleans College of Law. Attendees were treated to a live jazz band, plus tours of the Law Library and the Louisiana Supreme Court's courtroom. Law Library Director Miriam Childs selected a few items from the library's Rare Book Room and gave a brief presentation to groups of visitors as they toured the building.

The AALS Constitutional Law Section and the Supreme Court of Louisiana Historical Society (SCLAHS) jointly sponsored a reception on Friday,

January 4 in the Louisiana Supreme Court Museum. SCLAHS President Donna D. Fraiche welcomed AALS Section Chair Professor Shaakirrah R. Sanders and SCLAHS Secretary Professor Paul R. Baier, who co-chaired and hosted the event. Approximately 50 law professors were in attendance. The reception was held to commemorate the centenary of Oliver Wendell Holmes's *Abrams* dissent and the opinion authored by

Chief Justice E. D. White in the National Prohibition Cases. New Orleans Sazerac Rye Old Fashions were mixed by New Orleans Master Craftsman James Kelly, who provided a demonstration for the proper mixing of this popular drink. After a toast, the spirited group enjoyed themselves and their tour of the museum, courtroom, and Law Library's Rare Book Room. δ



Left to right: Law Library Director Miriam D. Childs, Louisiana Public Defender Board General Counsel Barbara G. Baier, and SCLAHS Secretary Paul R. Baier

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# LIBRARY ANNOUNCEMENTS

## Library Outreach

Law Library Director Miriam Childs and Research Lawyer/Librarian Sara Pic were excited to present at the SRL Summit, held prior to the Rural Courts Seminar in Natchitoches in November 2018. The librarians received many questions from judges and court administrators about our resources for self-represented litigants (SRLs). The Law Library is especially proud of its online resource guides for SRLs, such as [lasc.libguides.com/SRL](http://lasc.libguides.com/SRL), as well as our ongoing partnership with the Louisiana State Bar Association and Louisiana Library Association through the Legal Education and Assistance Program (LEAP).



*From left to right at the SRL Summit: Law Library Director Miriam Childs, Southwest Louisiana Law Center Executive Director Mark Judson, Louisiana Judicial College Program Attorney Michael Schachtman, Research Lawyer/Librarian Sara Pic, and Pro Bono Project Managing Attorney Kathleen Legendre.*

## Librarian Publication

Research Lawyer/Librarian Sara Pic recently published three chapters in *Sexual Orientation, Gender Identities, and the Law: A Research Bibliography, 2006-2016* (Hein, 2018). The

bibliography is intended to help researchers quickly find authoritative articles on sexual orientation and gender identity. Sara wrote the chapters covering health, youth, and elders.

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