

THE CELEBRATION
OF THE
BICENTENNIAL
OF THE
LOUISIANA SUPREME COURT



CEREMONIES

The Louisiana Supreme Court celebrated its 200th anniversary on March 1, 2013.

As a special session of court, the Louisiana Supreme Court justices presided over the Bicentennial ceremony, which commemorated the Court's two centuries of legal heritage. The ceremony took place at the Louisiana Supreme Court's courtroom at 400 Royal Street in New Orleans. The event was free and open to the public, with the option of one hour of CLE accreditation 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 was the master of ceremonies. After Lieutenant Governor 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.

Four speakers 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 Tulane Professor Richard Campanella; *The Civilian Aspects of Louisiana Law*, by LSU Law Professor John Randall Trahan; *The Role of the Louisiana Supreme Court in the Early Civil Rights Movement*, by UNO Emeritus Professor 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 International 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*. 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 following the ceremony.

**Eagle image on the cover is from the 1812 Constitution of Louisiana, which was originally written in French, was printed in English and sent to Washington to satisfy requirements set by Congress for statehood. The eagle is a nod to Louisiana becoming the 18th state of the Union. Photo provided by the Law Library of Louisiana.*

The Supreme Court of Louisiana, 1813-2013

A Bicentennial Sketch

By

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Preface

A hundred years ago the eminent attorney and gentleman-scholar Henry Plauché Dart spoke the principal address at the official celebration that marked the centenary of the Supreme Court of Louisiana. Quite lengthy, but not unexpectedly so for audiences of the day, Dart's speech surveyed the first century of court history and ended on a note of expectation. Having "lived," he said, "with my task during every moment I could steal from other duties, I leave it with the conviction that there lies here for some master mind a great and splendid story which, when written, will light up the history of Louisiana and confer a laurel upon the historian."¹

The printed text of Dart's words is a unique document. Even in 1913 it told only part of "a great and splendid story," as Dart himself admitted. It still retains value as a source if for no other reason than it is the sole gateway to a Supreme Court very different from the one known to us in 2013, and it also includes details about an antique Court that are not readily available elsewhere, if at all.

Dart's hoped-for "master mind" never materialized. Consequently, neither his contemporaries nor his successors followed up on his leads or attempted to use them as building blocks for carrying the history of the Court forward. The explanation for why that was so is twofold. Historians of the American judiciary were preoccupied with the Supreme Court of the United States and mostly ignored state high courts.² Twentieth-century historians of Louisiana law directed their energies elsewhere too. However, starting in the 1980s, a cadre of scholars centered at the University of New Orleans (UNO), Tulane University, and Loyola University of New Orleans began exploring aspects of the Court's history in ways Dart could not have imagined.³ What facilitated their work was a decision taken by the Court in 1976 to designate UNO as the depository for its oldest archives with the understanding that the university would conserve those priceless documents and make them readily available to researchers. To date, the result has been a steady outflow of books, articles, conference papers, dissertations, and theses that widens the view of this state's extraordinary legal past. Yet Dart's call for a full history of the Court has gone unanswered.⁴

The following pages limn a sketch of what such a fuller portrait might resemble. That said I lay no claim to Dart's promised "laurel."

¹ Henry Plauché Dart, "The History of the Supreme Court of Louisiana," in Louisiana Supreme Court, *The Celebration of the Centenary of the Supreme Court of Louisiana* (New Orleans, 1913), 37.

² James W. Ely, Jr., *A History of the Tennessee Supreme Court* (Knoxville, 2002), ix-x.

³ Warren M. Billings and Mark F. Fernandez, eds., *A Law Unto Itself?: Essays in the New Louisiana Legal History*, (Baton Rouge, 2001), 1-23.

⁴ Warren M. Billings, "Confessions of a Court Historian," *Louisiana History: The Journal of the Louisiana Historical Association*, 35 (1994): 261-70. The deposit comprised all of the extant records between 1813 and 1921. Documents down to the 1860s are available online and may be accessed by logging on the university library website, <http://www.library.uno.edu>, and clicking on the appropriate link.

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I. In the Beginning Was a Court

Monday, 1 March 1813, broke dreary in the Crescent City. Bad weather had been upon New Orleans for more than a week. A numbing clamminess chilled inhabitants, who sloshed through muddy Vieux Carré streets dodging dripping overhangs en route to wherever their daily rounds took them. Most were oblivious to an event that would affect them and their descendants for generations to come.

Around 11 A. M. that morning a clutch of spectators filled a room at Government House.¹ A crier commanded silence. The chatter of voices stilled as two judges, Dominick Augustin Hall and George Mathews, entered and swore oaths of office. Sitting at a table, each handed a large document to the clerk Reuben L. Hamilton and indicated that he should read them aloud. Hamilton recited Hall's first, which said in part "know ye that reposing special trust and confidence in the Patriotism, Integrity and abilities of Dominick Augustin Hall, I [William C. C. Claiborne] have nominated, and by and with the advice and consent of the Senate, do appoint him a Judge of the Supreme Court of the State of Louisiana, and do authorize and empower him to execute and fulfill the duties of the office according to Law; and to have and to hold the said office with all powers, privileges and emoluments to the same of right appertaining during good behavior." Hamilton then read like words from Mathews's paper. When he finished, Hall ordered him to enter both commissions "on the minutes" and adjourned "till tomorrow 11 O'clock." With that, the Supreme Court of Louisiana opened for business, and so it has continued from that day to this.²

The Supreme Court owed its origin to the beginnings of statehood and to provisions in the Constitution of 1812. After President Thomas Jefferson purchased Louisiana, its residents took literally a clause in the treaty of cession that promised them entry into the Union "as soon as possible," though they failed to reckon with the opposition of the president or of his cousin territorial governor William C. C. Claiborne, both of whom regarded these new Americans as incapable of immediate self-government.³ Undeterred, they clamored for admission but made little headway until Jefferson left the White House and Claiborne changed his mind. The breakthrough happened on 18 February 1811, when President James Madison initialed congressional legislation allowing "the people of Louisiana to form a constitution and state government."⁴ Word of Madison's action reached New Orleans in mid-April, and within a matter of days of the happy news Claiborne engineered passage of an act through the territorial assembly authorizing him to call an election of delegates to a constitutional convention.⁵ The polling took place in September, and in November delegates assembled several doors away

¹ Located at Toulouse and Levee Streets, Government House was the first Louisiana state capitol building. It contained the office of the governor, the legislature, and the Supreme Court but it was abandoned in 1827 for more commodious accommodations.

² Sybil A. Boudreaux, ed., "The First Minute Book of the Supreme Court of the State of Louisiana, 1813 to May 1818: An Annotated Edition" (MA thesis, University of New Orleans, 1983), 13, 14, 15.

³ Treaty Ceding Louisiana to the United States of America, 30 April 1803, Art. III, in Francis Newton Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America* (Washington, D. C., 1909), 3: 1360.

⁴ "An act to enable the people of the Territory of Louisiana to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes," Eleventh Congress, third session, 1811, *ibid.*, 3: 1376.

⁵ "An Act Providing for the Election of Representatives to form a Convention and Other Purposes," *Acts of the Second Session of the Third Legislature of the Territory of Orleans* (New Orleans,

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from Government House at Tremolet's coffee house. The convention finished its task in January 1812. Two members, Elegius Fromentin⁶ and Allan B. Magruder,⁷ brought engrossed texts of the constitution to Washington and submitted them to Congress for its blessing. Congressional acceptance followed, and on 30 April 1812, Louisiana officially joined the Union as its eighteenth state.⁸

In form and content the Constitution of 1812 bears striking similarity to other state constitutions of its era. Such a likeness is no surprise. All the delegates accepted the imperative of fashioning an American-style judiciary akin to others elsewhere in the nation as an absolute condition of statehood, meaning that they borrowed freely from judiciary articles in other state constitutions and the U. S. Constitution. Nevertheless, there were aspects of court-making that lay beyond the realm of their understanding.⁹ Their inexperience produced ambiguous results, none of which was more apparent than in their crafting of the judiciary article. Delegates of French and Spanish extraction lacked familiarity with Anglo-American constitutionalism, and to them the idea of a supreme court seemed exceedingly alien because it apparently had no room in their legal habits. They had difficulty envisioning how their civilian legal ways could coalesce with American law and practice. Reconciling the two seemed an upsetting, if not to say frightening, prospect. The American delegates on their part, like Americans elsewhere, had no sure grasp on what a supreme court could or should do, though they were wary of an unrestrained judiciary as a matter of principle. These divided opinions inspired some of the most contentious debates during the convention, and in the end, the judiciary article represented the minimum basis of agreement between the contestants.¹⁰

As such, the article established a supreme court consisting of up to five members, a majority of whom made a quorum. Lifetime gubernatorial appointees, the judges received annual salaries of \$5,000 and were liable to impeachment.

1811), 126.

⁶ Fromentin (d. 1822) was secretary of the constitutional convention. Trained for the Roman Catholic priesthood, he was a refugee from revolutionary France who settled in Pennsylvania in an émigré community near Philadelphia before he removed to Maryland, where he became a lawyer. Then he went to New Orleans, set up a law practice, and became clerk of the territorial legislature. After statehood, he was a United States senator and held several judgeships until his death. See Glenn R. Conrad, et al., eds., *A Dictionary of Louisiana Biography* (Lafayette, La., 1988), 1: 327.

⁷ Magruder (1775–1822) chaired the committee that drafted the constitution. A Kentuckian, he settled in Opelousas around the year 1806 and practiced law there. He was also a United States Senator. Conrad et al., eds., *Dictionary of Louisiana Biography*, 1: 542–43.

⁸ For a detailed account of the convention and its work see Warren M. Billings, “From this Seed: The Constitution of 1812,” in Warren M. Billings and Edward F. Haas, eds., *In Search of Fundamental Law: Louisiana's Constitutions, 1814–1974* (Lafayette, La., 1993), 6–21, 155–58.

⁹ It is a widely held view that the Constitution of 1812 was based almost entirely on the Kentucky Constitution of 1799. See for example Ben Robertson Miller, *The Louisiana Judiciary* (Baton Rouge, La., 1932; reprinted with additions, 1981), 12–20; Cecil Morgan, ed., *The First Constitution of the State of Louisiana* (Baton Rouge, La., 1975), 9–10; and Bennett H. Wall, Light Townshend Cummins, Judith Kelleher Schafer, Edward F. Haas, and Michael L. Kurtz, *Louisiana: History*, 4th ed. (Wheeling, IL, 2002), 114. That opinion seems to have arisen from a remark Governor Claiborne made to Secretary of State James Monroe to the effect that the convention for the most part “Copied from the Constitution of Kentucky,” Claiborne to Monroe, 29 Nov. 1811, in Dunbar Rowland, ed., *Official Letter Books of W. C. C. Claiborne, 1810–1816* (Jackson, Miss, 1917), 4: 211. However, as Philip D. Uzee forcefully argued, Claiborne exaggerated the importance of the Kentucky constitution, and he went to considerable lengths to demonstrate the extent to which other state constitutions influenced the delegates. See Uzee, “The First Louisiana Constitution: A Study of its Origins” (MA thesis, Louisiana State University, 1938), Appendix II.

¹⁰ Billings, “From this Seed,” 15–18.

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They were required to ride circuit across Louisiana, which the constitution divided into two judicial districts. Orleans, German Coast, Acadia, Lafourche, Iberville, and Pointe Coupee Counties (as civil parishes were then called) composed an eastern district, whereas a western one incorporated the remainder of the state. New Orleans became the eastern district seat where the Court sat from November through July, and in the west the Court convened at Opelousas between August and October. The judges acquired appellate jurisdiction over cases of more than three hundred dollars, and they were required to ground their written rulings upon particular laws “as often as it may be possible.”¹¹

Adding flesh to this skeleton fell to the General Assembly, which it did, but only just, before it sent the Judiciary Act of 1813 to Governor Claiborne on 10 February. The act fixed the size of the Court at three and invested its judges with sole authority of an unspecified power over the lower courts, control of the bar,¹² and liberty to make their own rules. It assigned the judges precedence according to the dates of their commissions and decreed that to hold a seat one need only demonstrate that he was “learned in the law.” So long as the judges stayed within these limits, they enjoyed free rein.¹³ Claiborne wasted little time signing the act into law, whereupon he swiftly forwarded his nominations of Dominick Hall, George Mathews, and Pierre Augustin Bourguignon Derbigny to the state senate for its approval. The senators confirmed Hall and Mathews with equal alacrity, and the governor initialed their commissions on 22 and 24 February, respectively. Derbigny’s nomination snagged on disagreements when American senators balked at approving the Frenchman and his confirmation stalled until 8 March. The delay had no effect on opening the Court because Hall and Mathews made the necessary quorum, and they went about their business.¹⁴

¹¹ La. Acts 1812, 2nd session, no. 18.

¹² The assignment of control of the bar to state supreme courts traced its origins to the seventeenth and eighteenth centuries when British colonial governors-general and their councils of state determined who could practice in the colonial courts. See Frank Dewey, *Thomas Jefferson, Lawyer* (Charlottesville, Va., 1986), chapter 1.

¹³ “An Act to organize the supreme court of the state of Louisiana, and to establish courts of inferior jurisdiction,” La. Acts 1812, no. 18.

¹⁴ Boudreaux, ed., “First Minute Book,” 20–21.

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II. Men on a Bench

What is to be made of the early judges? Very little, it must be said, because their letters and other papers—the stuff of biography—scattered and mostly disappeared long ago. Absent those key ingredients, they stand in history’s shadows.

Dominick Augustin Hall (1765–1820) left scarcely any tracks of his existence, so what may be told of him can be set down in a few words. A South Carolinian by birth, he practiced law in Charleston long before he caught the eye of Thomas Jefferson, who appointed him a federal circuit judge, where he worked until his circuit was abolished in 1802. Not wanting to leave Hall high and dry, and in need of a willing, experienced judge, Jefferson then sent him to the District Court for the Territory of Orleans, where he gained a solid reputation as a leading trial jurist in the American southwest. He continued as a territorial judge until 1812, when James Madison named him to the newly established United States District Court for Louisiana. Within the year Hall resigned to accept Claiborne’s nomination to the Supreme Court, but he returned to the federal bench in July 1813. Before he died in 1820, he famously ensnared himself in an imbroglio for fining General Andrew Jackson, who refused to recognize his writ of habeas corpus and clapped him in jail.¹

A rather better known George Mathews (1774–1836) was born in the frontier town of Staunton, Virginia, on the eve of the War for Independence. Afterwards his father, a Continental Army officer and British prisoner of war, moved the family to Georgia, where he attained political prominence as a member of Congress and two-time governor of the state. His namesake returned to the Old Dominion to round off his education before he went home, read law, and matured into a lawyer of some prominence. A Jeffersonian like his father, Mathews gained a recess appointment to the territorial court in Mississippi, and when it expired in 1806, Jefferson gave him a judgeship on the Superior Court for the Territory of Orleans. Mathews, who settled in St. Francisville, took up his new assignment having little fluency in French or Spanish and only a smattering of conversation with civil law. Even, so he proved a quick study, and his American background, his jurisprudence, and a genial nature sufficiently qualified him in Claiborne’s eyes for a place on the Supreme Court. There he would remain until death claimed him in 1836.²

Of noble parentage, a much-travelled Pierre Derbigny (1767–1829) fled revolutionary France for Saint-Domingue and then to an enclave of French émigrés outside of Philadelphia. While in the Philadelphia area, he likely perfected his command of English and came by his knowledge of American law, both of which stood him in good stead as he moved by turns to Pittsburgh, the Illinois country, New Madrid, Florida, and Havana before finally settling in New Orleans in 1797. His civil law background easily established him as one of the city’s pre-eminent attorneys and an activist in colonial and territorial politics. An outspoken advocate of immediate statehood and an ardent foe of Claiborne, he defended against the threats he perceived arising from the introduction of American law into the Orleans territory. His stance did not keep him from places in the territorial

¹ Janice K. Shull, *The Chief Justices of Louisiana: Life Sketches* (New Orleans, 2007), 1–2; Joseph G. Tregle, Jr. “Andrew Jackson and the Continuing Battle of New Orleans,” *Journal of the Early Republic*, 1 (1981): 373–93.

² Shull, *The Chief Justices of Louisiana*, 4–8; Mark F. Fernandez, *From Chaos to Continuity, The Evolution of Louisiana’s Judicial System, 1712–1862* (Baton Rouge, 2001), 46–47.

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legislature or from becoming secretary of the state senate and a Supreme Court judge. He stayed on the Court until 1820, when he resigned to make an unsuccessful run for governor. His defeat at the hands of Thomas Bolling Robertson did not stop the victor from naming him secretary of state, and he helped draft the Civil Code of 1825. He continued as secretary until his election as governor in 1828. A year later a carriage accident killed him.³

François-Xavier Martin (1762–1846) was quite the opposite of Derbigny in nearly every imaginable respect. Arguably he was among the most influential of the Court's jurists of all time. Unquestionably he was its most bizarre ever. Abstemious, slovenly, tight-fisted, with few friends and not the least desire to cultivate any, he was a lifelong bachelor who eschewed even the tiniest of pleasures. His sole passions were making law and making money. He was brilliantly adept at both.

Born into a family of Marseilles merchants, Martin left home to seek his fortune in Martinique. Martinique profited him nothing, so off he headed to New York City where Lady Luck showed him no kindness whatsoever. Nearly destitute, he walked to North Carolina and went over the hill after a brief, humiliating stint in the state militia during the fading days of the War for Independence. Penniless and desperate, he ended up in New Bern, where he seized a chance to become a printer. Despite his complete ignorance of the craft, he persevered and by the 1790s made himself into one of the foremost printers in North Carolina. Smelling lucrative opportunities in legal publishing, he cranked out a succession of law books, including the first ever-English edition of Robert Joseph Pothier's *Traité des obligations: selon les règles tant du for de la conscience que du for extèrieur*, which he reputedly translated directly into type from a French edition.⁴ Publishing legal texts kindled his interest in practicing law as yet one more way of enhancing his income, and in his spare time he read sufficiently to be admitted to the North Carolina bar as "Frank X. Martin." With erudite advocacy, he built a profitable practice and a widening reputation that brought him to the attention of President Madison, who appointed him a territorial judge in Mississippi. Subsequently, Madison transferred him to the Superior Court for the Territory of Orleans, where he gathered renown both as a jurist and as the reporter of his court's decisions. Came statehood and Claiborne named him the first attorney general before elevating him to the Supreme Court in 1815. Martin had given up printing by then, but he continued to prepare case reports, digests, and histories, the sale of which contributed to his income.⁵ In addition to the profits from his writings, shrewd real estate investments, careful lending, and unrelenting miserliness yielded great riches, even by today's reckoning. When he died he left a fortune of nearly half a million dollars in 1846 currency that he willed to a brother.⁶

³ *Dictionary of American Biography* (New York, 1928–1936), 5: 248–49; Joseph G. Tregle, Jr., "The Governors of Louisiana: Pierre Auguste Charles Bourguignon Derbigny, 1828–1829," *Louisiana History*, 22 (1981): 298; Conrad et al. eds., *Dictionary of Louisiana Biography*, 1: 288–90.

⁴ Warren M. Billings, "Introduction," Pothier, *A Treatise on Obligations Considered in A Moral and Legal View* (Union, N. J., 1999), viii–ix.

⁵ Carla Downer Pritchett, "Case Reporters in Nineteenth-Century Louisiana," in Billings and Fernandez, ed., *A Law Unto Itself*, 58–62.

⁶ Henry Adams Bullard, *A Discourse on the Life and Character of the Hon. François Martin* (New Orleans, 1847); Joseph G. Tregle, Jr., "Through Friends and Foes with Alexander Porter," *Louisiana History*, 3 (1962): 184–85; Michael G. Chiorazzi, "François-Xavier Martin: Printer, Lawyer, Jurist," *Law Library Journal*, 80 (1988): 63–99; R. Don Higginbotham, "François-Xavier Martin's History of North Carolina" in Lawrence H. Leder, ed., *The Colonial Legacy*, (New York, 1973), 4: 265–82; Judith

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Remote though Martin was, his contemporaries revered him and praised him for his signal juridical contributions.⁷ He shaped his beloved law as few others had. His rulings were important to the mixing of English, American, Spanish, French, and Roman law into the regime that still exists. Martin's *Reports* presented anyone who read them conclusive statements of his court's decisions. Even now his *History of Louisiana from the Earliest Period* sits apart as the first, and perhaps the best, treatment of the judicial order from colonial times to the early nineteenth century.

Alexander Porter, Henry Adams Bullard, George Eustis, and Rice Garland are the most notable of the eight judges⁸ who followed Martin to the Court. A native of County Donegal, Porter (1785–1844) emigrated from Ireland to live with an uncle in Nashville after the British hanged his father for being a rebel in 1798. His uncle employed him as a store clerk, and like Martin, he used his free time to study law before being admitted to the Tennessee bar in 1807. Taking the advice of Andrew Jackson, he removed to the Territory of Orleans first, to St. Martinville and then to a plantation on Bayou Teche in St. Mary Parish not far from Franklin. His affinity for his French-speaking neighbors gained him a seat at the constitutional convention of 1812 despite his not then being a United States citizen. At first he argued against statehood, only to relent once the convention softened some of his concerns for safeguarding the *ancienne population* and seated him on several important committees.⁹ A short stint in the General Assembly in the late 1810s preceded his acceptance of Governor Robertson's nomination to the Court in 1821. He quit the Court following his election to the United States Senate in 1833.

During his years as a judge Porter became the Court's reigning authority on Spanish law and on applying foreign and international law to state jurisprudence. In time he abandoned his defense of French-speaking interests after he came to believe that protecting them not only harmed public welfare but also threatened the very effectiveness of republican governance itself. That conviction fired his fierce effort to prevent the General Assembly from enacting Edward Livingston's codes and his open disdain for the Great Codifier, whom he thoroughly despised as a blackguard who epitomized every wicked and despicable thing in politics. Although he failed to block enactment of the Civil Code and the Code of Practice, he stymied passage of Livingston's Criminal Code and Code of Commerce, and he enjoyed the extreme satisfaction of helping his protégé Edward Douglass White defeat Livingston in both congressional and gubernatorial races.

Caustic, highly partisan, and at times cynical to an extreme, Porter was loyal to his friends and admiring of his colleagues on the bench. Always generous toward Mathews, he treasured Martin, though occasionally poking fun at Martin's eccentricities. His letters to his friend United States Senator Josiah Stoddard Johnston reveal an intensity of feeling for those he cherished and the depth of his

Kelleher Schafer, "François-Xavier Martin," <http://www.anb.org/articles/11/11-00558.html>; *American National Biography Online*, accessed 12 July 2012; Kathy T. Dugas, "An Immigrant's Journey to Wealth and Power: The Story of François-Xavier Martin," *Louisiana History*, 50 (2009): 321–40.

⁷ New Orleans *Daily Delta*, 11 Dec. 1846; William Wirt Howe, "Mémorial of François-Xavier Martin, in François-Xavier Martin, *The History of Louisiana from the Earliest Period*, ed. By John A. Gresham (New Orleans, 1882), 1: i–xxxviii.

⁸ The other four were Henry Carleton, Alonzo Morphy, Pierre Adolph Rost, and Edward Simon.

⁹ Billings, "From This Seed," 13, 16, 19.

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abomination of his foes. His correspondence provides unique insight that exists for no one else among the early members of the Court.¹⁰

Henry Adams Bullard and George Eustis were Massachusetts men. Bullard (1788–1851) earned degrees from Harvard College before studying law and moving to Pennsylvania where he became a Philadelphia lawyer. Recruited by José Alvarez de Toledo y Dubois for an expedition to free Spanish Texas, he headed off for Nacogdoches in 1813. The would-be rebel came swiftly to grief. Among the survivors of Toledo's defeated force, Bullard scurried to safety in Natchitoches, Louisiana, and there he put his sole asset—his legal training—to work. Once he had mastered local law, a thriving practice raised him to prosperity and standing in Natchitoches and the adjacent region. Politics beckoned. He went on to serve in all three branches of the state government as a legislator, a secretary of state, a district court judge, and a member of Congress. Filling Porter's vacancy, Bullard joined the Court in 1834 but resigned five years later to become acting secretary of state. Governor Alexandre Mouton returned him to the bench in 1840, where he remained until his retirement six years later.

Martin developed an uncharacteristic liking for Bullard even to the point of considering him a friend. The attraction appears to have been a mutual affinity for scholarship and learning that inspired their collaboration on a court rule that formalized standards for legal education. Bullard also teamed up with Thomas Curry¹¹ as a compiler of *A New Digest of the Statute Laws of the State of Louisiana: From the Change of Government to the Year 1841* (New Orleans, 1842) before he wrote a short biography of Martin that memorialized his late friend.¹² After Bullard left the Court in 1846, he accepted a position as the first dean and professor of civil law at the University of Louisiana, the forerunner of the Tulane School of Law. Unlike Martin, however, he had no head for money or the careful husbanding of his financial affairs. He died intestate and a bankrupt, and his possessions, including a substantial law library, were auctioned off to satisfy his creditors.¹³

George Eustis (1796–1858) grew up in Boston. After attending Harvard he traveled to The Netherlands in the company of Ambassador William Eustis, who employed his nephew as his private secretary in the American embassy at The Hague. While in The Hague young Eustis went to university and received a degree in civil law, which probably accounts for his decision in 1817 to cast his lot in New Orleans, though five years passed before he got his license. A successful law practice led naturally to politics and to public office. Eustis was attorney general from 1830 to 1832 and secretary of state between 1832 and 1834.

When Judge Mathews died, Governor White nominated Eustis to the post, but Eustis quit the bench after only four months because he and Martin swiftly came to sword's points. Eustis added his voice to the rising refrain of others who urged major court reform, and when he was elected a delegate to the convention that

¹⁰ Wendell Holmes Stephenson, *Alexander Porter: Whig Planter of Old Louisiana* (Baton Rouge, 1934); Tregle, Jr., "Through Friends and Foes with Alexander Porter, 173–91. Porter's letters to Johnston are at the Historical Society of Pennsylvania.

¹¹ Curry, a former reporter of Supreme Court decisions, was a district court judge at the time.

¹² Above, note 11.

¹³ Dora J. Bonquois, "The Career of Henry Adams Bullard, Louisiana Jurist, Legislator, and Educator," *Louisiana Historical Quarterly*, 23 (1940): 999–1106; Robert Feikema Karachuk, "A Workman's Tools: The Law Library of Henry Adams Bullard," *American Journal of Legal History*, 42 (1998): 160–89.

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produced the Constitution of 1845, he participated in rewriting the judiciary article. As a result, he became the first to be called Chief Justice of Louisiana, but was turned out following the adoption of the Constitution of 1852.¹⁴

Rice Garland (1798–1863) dishonored the Court and disgraced himself. A Virginian, Garland sprang from one of the long-tailed great planter families who stood atop Virginia society for generations but whose fortunes declined after the Revolution. Barely into his twenties when he was admitted to the Henry County bar, he soon abandoned his small practice in search of opportunities the Old Dominion no longer offered men of his generation. His quest eventually brought him to St. Landry Parish, where he purchased a plantation and married into the LaStrapes family. He went into local politics before his election to Congress and his appointment to the Supreme Court in 1840.¹⁵

A contemporary described Garland as a “champion of the Whig cause: very popular, . . . and well known thro’ the state; dexterous in seizing all popular topics; in short a skillful & effective Demagogue, [whose] course of life for some years back excited the apprehensions of his friends.” That “course of life” caused Garland’s downfall and heaped discredit on the Supreme Court. By the time Garland went to the Court, he had already abandoned his wife and children for a lover who took up with him in Washington before she settled in New Orleans. His infidelity raised few eyebrows because other men openly kept paramours in the Crescent City as a matter of course. In Garland’s case, though, his relationship “excited the apprehensions of his friends,” given the reported extravagances of his mistress, whose demands on his purse forced him to desperate measures. Short of cash in the summer of 1844, Garland forged a note for \$6,000 drawn on the account of one of the city’s wealthiest merchants, John McDonogh, who had business ties to Judge Martin as well. A broker bought the note, and when he attempted to cash it, McDonogh disclaimed it. Garland tried to cover himself by returning the unspent money and begging McDonogh not to expose him. McDonogh was amenable and agreed to destroy the fake note because, as an observer put it, he was not “averse perhaps to have a Judge of the Supreme Court in his power.” Garland hid, but seclusion only magnified whispers of his misdeed that trickled out over the ensuing months. The rumors intensified after McDonogh’s inept disavowal credited them the more. Garland’s own bold denials subdued the gossip mill momentarily, but his colleagues’ suspicions were aroused to the point of their launching a formal enquiry into his behavior. When Garland learned that he must explain himself under oath in open court, instead of facing the embarrassment of exposure, he tried to commit suicide by jumping into the Mississippi River. A deckhand on a nearby riverboat saved him from drowning. Garland fled to Texas, leaving behind a howling press and a Court suffering from severe damage to its reputation just as a new constitution was being drafted.¹⁶

Quirky personalities and character flaws aside, other qualities were more typical of the Court’s first twelve judges. None of them was Louisiana born. One

¹⁴ Shull, *The Chief Justices of Louisiana*, 12–16.

¹⁵ Byrne Family Genealogy, <http://www.brynefamily.net>, accessed 5 Aug. 2012; E. Lee Shepherd, “Breaking into the Profession: Establishing a Law Practice in Antebellum Virginia,” *Journal of Southern History*, 48 (1982): 393-410.

¹⁶ Richard Henry Wilde to John Walker Wilde, 21 Dec. 1845, in Edward L. Tucker and Richard Henry Wilde, eds., “Richard Henry Wilde in New Orleans, 1844–1847: Selected Letters,” *Louisiana History*, 7 (1966): 345; *New Orleans Daily Picayune*, 9, 10, 12 Dec. 1845; *New Orleans Commercial Bulletin*, 10, 11, 12 Dec. 1845; *New Orleans Bee* 12 Dec. 1845.

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was Irish, four were foreign French, and seven were Americans. They saw in Louisiana a place to start afresh, and they attained places well beyond their reach in their birthplaces. Ambitious to a fault, they displayed little shyness at immersing themselves deeply in state politics before and after they went to the bench.

Collectively, these commonalities speak to patent but often missed traits about the atmosphere of antebellum Louisiana. A land at once western and southern, Louisiana lay in a fast-growing region of new beginnings ample with opportunities—in plantation agriculture and slave ownership, steamboats and railroads, commerce and banking, politics and law—that drew the hungry adventurer, the absconder, the mountebank, and the bankrupt in the thousands. As iron filings to a magnet, New Orleans pulled in droves of pushy aspiring attorneys from everywhere. Such was that attraction that as early as 1813, Americans “from someplace else” comprised over sixty percent of the state’s practitioners, and that percentage remained a constant for much of the nineteenth century.¹⁷

American lawyers may have expected their legal ways to dominate Louisiana’s, the sooner the better for some, but they were neither as ignorant of nor as hostile to the civil law as is frequently supposed. Anyone who studied or practiced law in the United States in the decades after the American Revolution understood that the goal of legal independence from Great Britain was a highly desirable, ongoing enterprise. They knew too that legal-minded reformers touted the inherent virtues of codification and the civil law as a means of grounding rational laws and orderly judicial institutions upon republican principles. Indeed, many enthusiastically bought into the codification movement that swept the country before it receded during the 1840s. Therefore, the likelihood of amalgamating American and Louisiana law into a hybrid system never was an alien concept to the likes of Hall and the rest of the Court. Their challenge lay in finding a palatable mix that American, foreign-born, and native-born Louisianans alike could stomach.¹⁸

Contriving that blend provoked disagreements, at times keenly shrill ones, on the bench, at the bar, in the legislature, and among the literate public at large. But the judges’ steadfast determination to maintain their independence and their shared philosophical views of law ultimately muted the differences. To one degree or another all twelve judges were legal polytheists, meaning that they each conceived law in a particular way. For them law represented an ageless accumulation of wisdom that regulated all human activity. Law from time immemorial spilled from many sources instead of a single wellspring, people, place, or moment.

¹⁷ Elizabeth Gaspard, “The Rise of the Louisiana Bar: The Early Period, 1813–1839,” *Louisiana History*, 28 (1987): 183–97.

¹⁸ J. Louis Telkamp, “On Codification, Or the Systematization of the Law,” *American Jurist*, 26 (1841–1842): 113–44, 283–329; Perry Miller, “The Common Law and Codification in Jacksonian America,” *Proceedings of the American Philosophical Society*, 103 (1959): 463–68; Peter Stein, “The Attraction of the Civil Law in Post-Revolutionary America,” *Virginia Law Review*, 52 (1966): 403–34; Maxwell Bloomfield, “William Sampson and the Codifiers: The Roots of American Law Reform, 1820–1830,” *American Journal of Legal History*, 11 (1967): 234–52; Charles M. Cook, *The American Codification Movement: A Study in Antebellum Legal Reform* (Westport, Conn., 1981); Kathryn T. Preyer, “Crime, the Criminal Law, and Reform in Post-Revolutionary America,” *Law and History Review*, 1 (1983): 53–85; Kathryn T. Preyer, “Cesare Beccaria and the Founding Fathers,” in Mary Sarah Bilder, Maeve Marcus, and R. Kent Newmyer, eds., *Blackstone in America: Selected Essays of Kathryn Preyer* (New York and Cambridge, 2009), pp. 239–52; Christopher M. Curtis, “Codification in Virginia: Conway Robinson, John Mercer Patton, and the Politics of Law Reform,” *Virginia Magazine of History and Biography*, 117 (2009): 140–81; Ellen Holmes Pearson, *Remaking Custom: Law and Identity in the Early American Republic* (Charlottesville, Va., 2011).

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Gaining from the totality of human experience, law adjusted gradually, even imperceptibly. Yet when alterations happened the changes pointed inevitably toward greater individual freedom and opportunity. As the past more than amply revealed, law could be arrayed into logical systems that invested politics with their distinctive order. Understood in these terms, rather than rivaling one another, common law and civil law complemented each other, and they could be fashioned into jurisprudence that met the distinctive needs of Louisiana.

In its everyday world, the Court always needed to resolve appeals in ways that convinced suitors that they had been treated justly and evenhandedly. To that end, sometimes the judges grounded their rulings in the *Digest of 1808*, sometimes they relied on civil law doctrines, sometimes they turned to American common law precedents, and sometimes they concocted solutions from whole cloth. Decisions that worked meant more to them than notional niceties, and they were disinclined to favor one method to the exclusion of another.

Not everyone agreed with that approach, least of all that most ardent codifier, Edward Livingston. Livingston (1764–1836) belonged to a powerful family whose Scottish ancestors immigrated to New York in the mid-seventeenth century. Growing up during the Revolutionary War inspired his distaste for English law and fondness for Roman law that in later life bloomed into a steadfast commitment to codification. Family connections and a quicksilver intellect assured his rise in public life until suspicions that he was an embezzler abruptly scotched his career in the Empire State. Seeking to begin anew, he removed to New Orleans in 1804. Livingston and Louisiana proved a good fit. Almost immediately, he established himself as one of the territory’s foremost attorneys. Marriage into a Creole family cemented him personally and professionally to the *ancienne population*. He developed a relentless hostility to Governor Claiborne, though he favored Claiborne’s attempt to define the territorial laws in force via the *Digest of 1808*, which he regarded as a code, albeit an imperfect one.¹⁹

To Livingston, the *Digest of 1808* should have replaced colonial laws and bound the courts to its prescriptions, but neither the Superior Court nor the Supreme Court was similarly minded. Livingston’s vexation heightened, especially after he ended up on the losing side in the case of *Cottin v. Cottin*. Ruling for the Court, Pierre Derbigny established the civil laws of Spain as the basis of Louisiana’s common law, and in effect Derbigny also declared the *Digest of 1808* as nothing more than a mere digest of existing laws to which his colleagues might refer as they saw fit.²⁰ Livingston now resolved to check his adversaries, and he began a political campaign that culminated when the General Assembly adopted the Civil Code of 1825 that he helped draft.²¹

For its part, the Court resisted being exclusively tied to the Civil Code. Mathews and the others went so far as to ignore post-1825 repealing statutes that invalidated all foreign law in force at the time of the Purchase, the *Digest of 1808*, and every territorial or state act that had been revised by the Civil Code. The effect of those laws and the Court’s stance clouded an already muddled situation. Martin

¹⁹ Edward Livingston, “Autobiographical Jottings,” n. d., Edward Livingston Papers, Box 80, Department of Special Collections, Firestone Library, Princeton University; William B. Hatcher, *Edward Livingston: Jeffersonian Republican and Jacksonian Democrat*, (Baton Rouge, La., 1940), pp. 1–10; Fernandez, *From Chaos to Continuity*, pp. 74–76.

²⁰ *Cottin v. Cottin*, 5 Mart (o.s.) 93 (1817).

²¹ Fernandez, *From Chaos to Continuity*, 76–81.

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finally clarified the muddle in 1839 when in the case of *Reynolds v. Swain*²² he asserted the Court's right to say what was law in Louisiana, and who ultimately declared it. His decision, the Louisiana equivalent of *Marbury v. Madison*, strengthened the Court with an Anglo-American tincture, and it guaranteed that the blending of American, British, French, Roman, and Spanish law would continue.²³

Neither the General Assembly nor the codifiers among the bar pushed back. The latter had already lost their most effective voice after Livingston died in 1836, and with his death the intense ardor for codification died too.²⁴ Foes of codification, such as Alexander Porter, had accepted the Code by 1839, so it was no longer a political issue for them. As for Martin, the contest between him and the codifiers was always less about the Code and more about his determination to maintain judicial independence. His ruling in *Reynolds* guaranteed that for time to come.

²² *Reynolds v. Swain*, 13 La 193 (1839).

²³ Kilbourne, *History of the Louisiana Civil Code*, 131–65; Fernandez, *From Chaos to Continuity*, 81–88.

²⁴ Gustavus Schmidt, "The Supreme Court and Its Decisions," *Louisiana Law Journal*, 1 (1841–1842): 138.

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III. Judges at Work

From the outset, the judges confronted two matters that went to the heart of their work. One involved refinements to their constitutionally-mandated jurisdiction. The other turned on how they should employ their rule making authority to run the Court and how to regulate the bar. Solutions to both were answers of the moment that proceeded mainly from the direction of Hall, Mathews, and Martin.

Within weeks of the Court first opening its doors, it ruled on two cases that determined the scope of its jurisdiction. One dispelled any uncertainty about whether the Court was obliged to hear appeals from the defunct Superior Court. Because the “Superior Court was no part of [the new state government and] . . . independent of the future authorities,” the Supreme Court decided that the judgments of its predecessor “must stand as irrevocable as they were under the territorial government.”¹ As Henry Plauché Dart noted, that decision gave the Supreme Court a clean slate on which “to make new jurisprudence.”² The second case addressed the right of the Court to take criminal appeals, and in this instance the judges held that they lacked any authority because the constitution explicitly confined their jurisdiction to civil matters only.³

Dominick Hall settled three fundamental questions of governance that both the Constitution of 1812 and the Judiciary Act of 1813 failed to answer—who presided, who determined how to manage court business, and what rules dictated court proceedings. His solutions to the first two had the elegance of simplicity itself. Being senior to Mathews and Derbigny by virtue of Claiborne having signed, sealed, and dated his commission before theirs, Hall merely declared himself presiding judge and assumed the role of principal administrator. (Mathews and Martin adhered to that precedent when they succeeded to the center chair.) Next, Hall got the Court to accept a two-part rule that prescribed qualifications for newcomers and certified lawyers who were former members of the late territorial bar. Then he named Martin, Edward Livingston, Abraham Ellery, Etienne Mazureau, and Abner L. Duncan “a Committee to draw up Rules & Regulations for the Government of this Court.”⁴

The committee seems to have fulfilled its charge without delay or disagreement, given that the Court started hearing appeals quite soon after Hall appointed it. No record of the committee’s deliberations has come down to us, and there are no extant texts of the rules themselves, although the manner of their writing can be imagined readily enough. Given that Martin had recently been a Superior Court judge, he probably chaired the committee, possibly at Hall’s insistence. Either Hall or Martin may have proposed the Practice Act of 1805 as a model. That recommendation would have drawn little, if any, opposition from committee members because all were experienced advocates well steeped in territorial court procedures. Then too, the Court’s disposal of its first cases closely resembled stipulations in the Practice Act unequivocally suggests that the committee cut familiar regulations to suit the new high court.⁵

¹ *Bermudez v. Ibanez*, 3 Mart (o.s.) 2 (1813).

² Dart, “History of the Supreme Court of Louisiana.”

³ *Laverty v. Duplessis*, 3 Mart (o.s.) 52 (1813).

⁴ Boudreaux, ed., “The First Minute Book of the Supreme Court,” 16; Warren M. Billings, ed., *The Historic Rules of the Supreme Court of Louisiana, 1813–1879* (Lafayette, La., 1985), 1.

⁵ La. Acts 1805, no. 219; *Lanusse v. Massicot*, Ser. 1, Docket No. 2, Supreme Court of Louisiana

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Over the next three decades, the Court grafted some forty amendments onto the original rules. Most additions aimed at lessening repeated demands for rehearings, improving filings, or coping with a caseload that doubled by the 1820s and rose continually thereafter.⁶ Others regulated the bar. Of the latter, none was of greater importance than one the Court adopted in 1840, which thoroughly revised the judges' supervision of the bar.⁷

Most likely the brainchild of Martin and Henry Adams Bullard, the Rule of 1840 had a single purpose, to alleviate an onerous, time-eating chore of qualifying would-be attorneys. Their sheer numbers threatened to overwhelm the Court, an increase that was due partly to a low threshold for admission—evidence of citizenship, good character, fluency in English, and familiarity with the law. To remedy the situation, the new rule introduced two crucial reforms. One raised the education standards for future lawyers by requiring them to demonstrate their mastery of a syllabus of prescribed law books. Unique to Louisiana, this “Course of Studies,” as the rule styled it, compelled candidates to learn the statutes of state and nation as well as the subjects contained in a dozen books whose topics ran from the practical to the theoretical aspects of law in general and the law of Louisiana in particular. The second change dealt with administering bar examinations. Henceforth, instead of holding tests at every sitting, the exams would take place once a quarter in the two Supreme Court districts. A court-appointed committee of six local attorneys would vet applicants.⁸ Those they vouchsafed would be quizzed in open court by the judges, and if they passed, then the successful candidates obtained their licenses. The rule met expectations, and with modifications it continued in effect for eighty years.⁹

Valuable though these improvements were, they failed to speed the Court's work. Sessions remained time-consuming and not very efficient. For reasons they never revealed, the judges permitted unlimited oral arguments that sometimes stretched into days. They displayed a similar generosity in granting applications for rehearings, despite their rules that limited them. Then too, their penchant for leisureliness extended to the bar examinations, so those tests could last for hours on end. Their approach to opinion writing was equally languorous.

There is no record that indicates how the judges actually assigned the responsibility for writing decisions or how they went about crafting them. Their earliest opinions were unsigned, and so they continued until Martin joined the Court in 1815 and initialed an opinion in a case involving Andrew Jackson's imposition of martial law.¹⁰ Dissenting opinions began to appear by the late 1810s,

Collection, Department of Louisiana & Special Collections, Earl K. Long Library, University of New Orleans; Mark F. Fernandez, “The Rules of the Courts of the Territory of Orleans,” *Louisiana History*, 38 (1997): 63–86.

⁶ Billings, ed., *Historic Rules of the Supreme Court*, 1–6; Mark F. Fernandez, *From Chaos to Continuity: The Evolution of Louisiana's Judicial System, 1712–1862* (Baton Rouge, 2001), 46–50.

⁷ Billings, ed., *Historic Rules of the Supreme Court*, 6, 7–8, 9–11.

⁸ The first committee in the Eastern Supreme Court district consisted of Etienne Mazureau, George Eustis, George Strawbridge, Pierre Rost, John Randolph Grymes, and Levi Pierce. Eustis, Strawbridge, and Rost had served briefly on the Court. Grymes, Mazureau, and Pierce were among the leading New Orleans attorneys. Who made up the committee for the western district is unknowable because none of the western session records for the period are extant.

⁹ Warren M. Billings, “The Supreme Court of Louisiana and the Education of Louisiana Lawyers,” *Louisiana Bar Journal*, 33 (1985): 74–80; Warren M. Billings, “A Course of Legal Studies: Books That Shaped Louisiana Law,” in Billings and Fernandez, eds., *A Law Unto Itself*, 28–39.

¹⁰ 3 Mart (o.s.) 530 (1815).

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and Martin was also the author of the first of them.¹¹ In 1821, the General Assembly fished in troubled waters when it decreed that the Court should “deliver their separate and distinct opinions . . . *seriatim* commencing with the junior judge.”¹² That statute so insulted the judges that they retaliated by adding this sentence at the foot of each of their rulings: “I concur in this opinion for the reasons adduced.”¹³ Stung by the Court’s rather humorous rebuff, the legislators promptly repealed the offending act at the next meeting of the General Assembly.¹⁴ Thereafter the judges produced individual opinions, much as they do now.

¹¹ 4 Mart (o.s.) 564 (1817).

¹² La. Acts 1821, no. 98.

¹³ 10 Mart (o.s.) *passim*. (1821); Supreme Court Minute Book, No. 2, 1821–1823, *passim*.

¹⁴ La. Acts 1822, no. 24.

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IV. The Supreme Court Reborn

When the Supreme Court marked its tenth birthday, it was a troubled institution. It struggled to keep abreast of its workload, and as it continued to lag even farther behind, it became the object of shrill demands for its reformation. Clogged dockets were symptomatic of deeper problems that shot from many roots. The coming of steamboats, railroads, and banks led to new laws that raised hosts of issues that wound up on the Court's doorstep.¹ Population growth and the economic dislocations spawned by the Panics of 1819 and 1837 swelled the frequency of appeals.² There was a comparable flood of requests for bar examinations that the Rule of 1840 could slow but not stanch. The Court's ambiguous definition in the Constitution of 1812 and the Judiciary Act of 1813 threw up roadblocks that the judges were often unable to overcome by using their rule making powers or that could not be fixed by the General Assembly. The rules themselves often stirred controversy, as in the instance of one enacted in 1821 that required demonstrable fluency in English as an absolute condition for obtaining a law license.³

Much about the judges' work environment was to blame. Apart from modest allowances for pens, paper, ink, and books that the state treasurer disbursed in quarterly installments, little public funding supported the Court.⁴ Law clerks, secretaries, and the administrative entities that compose today's Court did not exist. Rented office space doubled as chambers, and the Court lacked a permanent home until 1910.⁵ There was no law library in either of the two judicial circuits. (The founding of the New Orleans Law Association [NOLA] in 1847 eventually provided access to a substantial collection of law books whenever the judges met in the Crescent City, but they lacked anything comparable whenever they sat in Opelousas or other towns in the west.⁶) Riding circuit taxed the judges physically, and although they stuck to the rigid constitutionally-mandated circuit timetable, the western district was consistently underserved.⁷

The judges themselves contributed their share of difficulties. Their fondness for a three-day a week hearing schedule, their tolerance for endless oral arguments, and the time they expended on crafting their long opinions impeded the efficient dispatch of appeals. Poor health dogged Mathews the older he got.⁸ Toward the end of his life he frequently missed court dates, which prevented the

¹ Jeannine E. Douglass, "Steamboats and Slaves: Issues and Liabilities in Louisiana, 1831–1861: A Thesis" (MA thesis, University of New Orleans, 1991); George D. Green, *Finance and Economic Development in the Old South: Louisiana Banking, 1804–1861* (Stanford, 1972).

² Charles G. Rivet, "Commercial Evolution in the Catahoula Basin with Perspectives on Two Frontier Families" (MA thesis, University of New Orleans, 1997); Wall et al., *Louisiana: A History*, 129, 153, 158.

³ Billings, ed., *Historic Rules of the Supreme Court*, 6.

⁴ La. Acts 1812, no. 200; La. Acts 1816, no. 150; La. Acts 1818, no. 36; La. Acts 1819, no. 74; La. Acts 1833, no. 8.

⁵ La. Acts 1824, no. 202; La. Acts 1837, no. 17. The Court sat in a room in the capitol building on Baronne and Common Streets after the state government abandoned Government House. Following the removal of the capital to Baton Rouge in 1848, the Court met in the Sala Capitular in the Cabildo.

⁶ Warren M. Billings, *Magistrates and Pioneers: Essays in the History of American Law* (Clark, N. J., 2011), 317–18.

⁷ J. E. Morse, "Observations on the Present Judiciary System in the Western Districts of the State of Louisiana," *Louisiana Law Journal*, 1 (1841–1842): 18–22.

⁸ Mathews was absent for most of 1829. Minute Book No. 4, 1824–1839, *passim.*; 241–43, Supreme Court of Louisiana Collection, Department of Louisiana and Special Collections, Earl K. Long Library, University of New Orleans.

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Court from doing business for want of a quorum.⁹ Failing eyesight plagued an aging Martin, who was absent from the Court for six months in 1835 when he journeyed to Paris in search of corrective surgery that failed.¹⁰ Shortly after becoming chief judge, Martin went completely blind. He refused to stand down.¹¹ Like Mathews before him, Martin stubbornly resisted efforts to improve the Court's work routine. His intransigence drove off younger judges and caused months-long delays because there was no quorum. By the 1840s, the combination of the mountainous backlog of unresolved appeals, pressure for the Court to take criminal appeals,¹² and the Rice Garland scandal added mightily to a statewide outcry that inspired the convention that wrote the Constitution of 1845.¹³

Not unexpectedly, much of the convention debates revolved around reforming the Supreme Court. Delegate George Eustis played an especially full hand in writing the new judiciary article. In contrast to the architects of the old constitution, Eustis and his fellow delegates better understood the role of the Supreme Court and its place in state government. So the high court they wrote into the new constitution was quite different from the one it replaced. Taking a page from other state constitution makers of the day, the convention established the office of chief justice and formalized his role as the court's principal administrator. Besides the chief, there would be three associate justices. Gubernatorial appointees, the chiefs would each earn a salary of \$6,000, whereas the associates would each receive \$5,500. As in the past, they would ride circuit, but only as the need required, as opposed to the rigid four-month schedule mandated by the old constitution. The justices retained their rule making and supervisory powers, but their jurisdiction now expanded to include criminal appeals, and for the first time the justices could issue writs of habeas corpus. Perhaps because of his unpleasant experiences when he sat briefly with Martin, Eustis may have been the author of a proviso limiting the members to eight-year terms of office. Whoever was responsible, the introduction of term limits lessened the likelihood of physical disabilities impeding the timely dispensation of justice.¹⁴

Although the voters approved it by a huge margin, the Constitution of 1845 was not a document loved by everyone. The old Court adjourned *sine die* in early March 1846, and on the 18th, the day after Martin's eighty-fourth birthday, the new Supreme Court met in an organizational session.¹⁵ Presiding as the first Chief Justice of Louisiana was none other than George Eustis. Joining him were Pierre Adolphe Rost (1797–1868),¹⁶ George Rogers King (1807–1871),¹⁷ and Thomas Slidell (1805–1864),¹⁸ each of whom brought special skills to their new positions.

⁹ Ibid., 477–78.

¹⁰ The state house of representatives authorized the absence in 1835. See La. Acts 1835, no. 19. He received a similar leave in 1834. See La. Acts 1834, no. 108.

¹¹ Billings, *Magistrates and Pioneers*, 252–53.

¹² Gustavus Schmidt, "On the Necessity of a Court of Appeals in Criminal Cases," *Louisiana Law Journal*, 1 (1841–42): 79–81; Sheridan E. Young, "Louisiana's Court of Errors and Appeals," in Billings and Fernandez, eds., *A Law Unto Itself*, 99–116; Warren M. Billings, "The Origins of Criminal Law in Louisiana," *Louisiana History*, 32 (1991): 63–76, esp. 68–69.

¹³ Fernandez, *From Chaos to Continuity*, 89–91.

¹⁴ Ibid., 91–98; Judith Kelleher Schafer, "Reform or Experiment? , The Constitution of 1845," in Billings and Haas, eds., *In Search of Fundamental Law*, 21–37.

¹⁵ Supreme Court of Louisiana Minute Book No. 9, 1846–1848: 1–6.

¹⁶ Conrad, et al., eds., *Dictionary of Louisiana Biography*, 2: 697.

¹⁷ Young, "Louisiana's Court of Errors and Appeals," 103–104.

¹⁸ Conrad, et al., eds., *Dictionary of Louisiana Biography*, 2: 747.

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Like Eustis, Rost had briefly sat on the old Court, and his presence now provided a measure of continuity with the past. King was an experienced criminal lawyer. Having lately been a judge on the defunct Court of Errors and Appeals, and the author of most of that court's opinions, his knowledge gave him the leading role as the Supreme Court took its first criminal appeals and hammered out procedures for hearing those causes.¹⁹ Slidell's appointment was his first judicial office, but he was hardly an unknown because both he and his more renowned elder brother John were active Democratic politicians. An expert in the law of partnerships, he wrote every decision in cases that involved partnership questions until he left the Court in 1853. His opinions suffused commercial relationships in common law principles and sources for which he had a great liking.²⁰

Eustis proved an expert administrator who brought a clear-headed approach to the problem at hand that restored the confidence of the bar and the public in his court. First off, he plucked a committee from the New Orleans bar that he charged to recast the governance of the Court by revamping its rules. The committee went to work, and in November 1846, it submitted a restatement that replaced a repetitive, outdated, and sometimes, unworkable jumble of directives with eleven concise, well-ordered rules that the Court promptly accepted in principle. However, Eustis and his colleagues could not resist some additional tinkering before they perfected the version that satisfied everyone.²¹ (That rendition would acquire an importance far beyond Eustis's original purpose because it established the basic structure of every later revision.²²) Next, Eustis adroitly coaxed Rost, King, and Slidell into writing shorter opinions, which sped up the Court's work. Cajoling them was not so difficult because he enjoyed an advantage Martin had not. His were genial colleagues who were as committed as he to court reform. Besides, he set the example, for he had a reputation as a workhorse. When they all left the Court in 1853, they had successfully emptied the dockets and refurbished the Court's stature. A gauge of that accomplishment can be seen in the fact that their opinions filled several stout volumes of *Louisiana Reports*!²³

Fruitful as the Eustis Court was, it lived but a short life. The unpopularity of the Constitution of 1845 bred such widespread hostility that in the spring of 1852, voters elected another convention to recast the state's fundamental law anew. This time, however, the source of the disaffection had less to do with the justices or the Supreme Court and rather more to do with other issues that agitated state politics of the day.²⁴

The judiciary article in the new constitution contained several consequential structural modifications, however. For one, it raised the size of the Court from four to five justices, which eliminated the possibility of tie votes that by default confirmed contrary district court rulings, as had happened sometimes. Two other changes lengthened the terms of office from eight years to ten and established an elected judiciary. The latter alteration required candidates for chief to run

¹⁹ The development of the Court's exercise of its criminal jurisdiction awaits detailed investigation.

²⁰ Fernandez, *From Chaos to Continuity*, 99.

²¹ Billings, ed., *Historic Rules of the Supreme Court*, 16–21.

²² Billings, *Magistrates and Pioneers*, 303, note 20.

²³ Dart, "History of the Supreme Court," 20–21.

²⁴ Wayne M. Everard, "Louisiana State Politics and the Constitution of 1852" (M. A. thesis, University of New Orleans, 1972); Wayne M. Everard, "Louisiana's "Whig" Constitution Revisited: The Constitution of 1852," in Billings and Haas, eds., *In Search of Fundamental Law*, 37–52.

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statewide and prospective associates to stand in one of four special judicial constituencies. When another proviso gave the General Assembly the right to limit the justices' jurisdiction in civil causes only to questions of law, it raised the possibility of a significant legislative intrusion on the Court's appellate authority. (That power was never exercised, and it disappeared from later constitutions.) Finally, the constitution put a restriction on the Court's rule making power by reducing the length of oral arguments from the usual limitless amount of time to a total of four hours. Setting that mandate in fundamental law precluded any alteration either by the justices or the General Assembly, which could be defended as a "good government reform." Actually it was clearly a response to the Court's and the bar's reluctance to tamper with a custom of long standing. Indeed, according to Henry Plauché Dart, once the new constitution went into effect, "a chorus of protest" went up as the "legal horizon grew black with prophecy of evil" consequences. Such dire predictions came to naught because the restriction compelled lawyers to restrain their tendency to windiness.²⁵

Eustis's Court closed its doors in May 1853 to make way for its successor. Thomas Slidell became the second Chief Justice, but he only held the office for about two years before a grievous injury sustained during an election riot unhinged him mentally and forced his exit. A spirited, costly campaign for his replacement ensued, and Edwin T. Merrick (1809–1897) emerged the victor. Yet another Massachusetts native, Merrick spent time in upstate New York before heading west to Ohio, where he read law with an uncle and was admitted to the Ohio bar. He inherited the uncle's law practice, but gave it up to settle in Louisiana. Partnering with a Clinton attorney, he mastered Louisiana law and developed a prosperous practice of his own before he sought judicial office.²⁶

In energy and demeanor, the Merrick Court bore a striking resemblance to its predecessor. Merrick was the equal of Eustis as an administrator. He enjoyed similar pleasant dealings with colleagues who were as diligent as he in staying abreast of the appeals that came up to them. In their zeal to keep pace, they rivaled one another to see which of them could produce the most opinions the fastest. Their contest, at least in the eyes of contemporaries, contributed to the greater efficiency and improvement in the quality of the Court's jurisprudence that began in Eustis's day.²⁷

As a result of the reforms of 1845 and 1852, the reborn Supreme Court took on characteristics that foreshadowed attributes of the modern Court. To observers in Louisiana or elsewhere in the 1850s, the reformed Court looked and acted very much like other high courts across the nation. Controversies about the sort of legal order it should enforce were passé because the nature of that regime was now settled, and like American law everywhere, it finally became a law unto itself—at once derivative and distinctive. The likelihood of future reforms remained a possibility if not an outright certainty. As the decade closed, no one could have foreseen the coming of the Civil War and Reconstruction and their effects upon the Court.

²⁵ La. Constitution of 1852, art. 61–70; Dart, "History of the Supreme Court," 22.

²⁶ Shull, *The Chief Justices of Louisiana*, 20–23.

²⁷ Dart, "History of the Supreme Court," 22.

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V. Not So Peaceful Times

Tensions between North and South over the place of slavery in the nation tautened during the 1850s. They stretched beyond the breaking point after John Brown's raid on the federal arsenal at Harper's Ferry, Virginia, and the election of Abraham Lincoln goaded South Carolina hotheads to secede. A short while later, a fire-eating Governor Thomas Overton Moore called the General Assembly to a special session in Baton Rouge, and urged it to summon a convention to consider withdrawing Louisiana from the Union. The call went out, the voters spoke, and on 26 January 1861, the convention overwhelmingly voted to secede, and the Pelican State joined the Confederacy.

No sooner had secessionists worked their way than a majority of able-bodied lawyers answered the call to rebel arms. The sitting justices became Confederates too, although none of them wore the uniform. Initially their change of allegiance had few consequences. They merely purged references to the United States from their proceedings and ordered a new numbering system for the dockets, and business continued as usual.¹ Things took a sudden, decidedly different turn after New Orleans fell to Union general Benjamin F. Butler's army in April 1862. Chief Justice Merrick hurriedly adjourned the Court and everyone hastily decamped for the safety of rebel-held Opelousas. Then they scurried to Alexandria before winding up at Shreveport, the last capital of Confederate Louisiana, where they remained until war's end. Being so much on the move prevented the Court from doing anything until after the guns stilled at Appomattox.

Civil war turned Louisiana into a wasteland. Fighting took off an incalculable number of black and white Louisianans. At least half of the New Orleans Law Association died in the conflict, and probably an equal number of attorneys from elsewhere in the state, too. People perished for want of food and shelter because the armies had rapaciously gobbled up the one and wantonly destroyed the other. Three years of fighting and pillaging made shambles of roads, bridges, railways, levees, port facilities, and similar pieces of infrastructure. Banks and commercial enterprises were in ruins. Money and credit were scarce. A once thriving agricultural economy lay in tatters. Devastating as these economic blows were, the greatest of them resulted from the end of slavery. Before the war slaves were prized not only as labor, but they also counted as a primary reservoir of capital that their owners relied upon as collateral for loans, mortgages, and all kinds of other long-term agricultural investments. Emancipation swept that asset away. The destruction of slavery meant something else for the state after 1877—the resurrection of white home rule, the coming of Jim Crow, and the further degradation of most Louisianans, who were reduced to desperate impoverishment and ruthless exploitation by the powerful. Here then was the milieu in which the Supreme Court operated to the close of the nineteenth century.²

Some Unionists and ex-Confederates favored abolishing Louisiana's mixed legal regime, albeit for different, highly charged partisan reasons. Nothing other than high heat and great noise came of that attempt, but there were changes in the statutes and the Civil Code that eliminated all mention of slavery and at last purged French from legal proceedings.³ The postwar Supreme Court differed markedly from its antebellum predecessors. Repeated constitutional revisions

¹ Dart, "History of the Supreme Court," 23.

² Billings, *Magistrates and Pioneers*, 319–20; Wall, et al., *Louisiana: A History*, 189–215.

³ Mitchell, J. Franklin, "The Foundations and Meaning of the Slaughterhouse Cases, Part 1,"

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altered it in vital ways. Unionists first restated fundamental law as the Constitution of 1864. Its judiciary article kept the size of the Court at five members. Justices once again became gubernatorial appointees who would serve eight-year terms and receive salaries of \$7,000 and \$7,500 per associate and chief justice, respectively. That document also did away with the former judicial districts, at least temporarily, because the constitution applied only to the southern parts of Louisiana, which were in federal hands when it was ratified.⁴ A provision in the second, more refined, Unionist Constitution of 1868, raised the dollar amount for cases to lie on appeal from \$300 to \$500. More significantly, another of its articles specified explicit qualifications for office: United States citizenship and five years of practice, at least three of which had been in Louisiana after 1865, which disqualified ex-Confederates and assured Republican control of the courts.⁵ A third constitution, promulgated by Bourbon Democrats in 1879, retained an appointive court, with the governor picking all five justices from any of four judicial constituencies devised for that purpose. (Two seats went to Orleans and its surrounding parishes, an arrangement that remained in place until 2000.) Nominees would serve staggered twelve-year terms with the possibility of reappointment. This constitution also revived the old eastern and western Supreme Court districts and put the justices on the circuit once more. Then too, it reduced the salaries of all the justices to \$5,000, but it eased the caseload by adding two intermediate benches to hear civil appeals involving less than \$2,000.⁶ Finally, it broadened the Court's jurisdiction considerably when it assigned the justices wider supervisory power over the lower courts.⁷ The Constitution of 1898 kept an appointive judiciary but dictated that the office of chief justice would henceforth be based on seniority of service, a provision that continues in force. (A 1904 constitutional amendment subsequently restored the right of electing the Court to the voters.) It required that nominees be citizens of the United States, learned in the law, and have practiced in the state for a minimum of ten years. Two other modifications abolished circuit riding and designated New Orleans as the Court's sole seat. The latter stipulation galvanized a lengthy campaign to build the Court a permanent home that culminated in 1910 with the opening of the massive Beaux Arts style courthouse at 400 Royal Street in the heart of the French Quarter.⁸

Several changes dealt with court proceedings. Most notably, when the Court first re-opened, it immediately embraced the Eustis Rules as its "mode of procedure."⁹ Those rules underwent a thorough revision in 1869 that preserved

Tulane Law Review, 18 (1943): 36–37, esp. note 113; John Ray, comp., *Digest of the Statutes of the State of Louisiana*, in *Two Volumes* (New Orleans, La., 1870); John Ray, comp., *Revised Civil Code of Louisiana* (New Orleans, La., 1870); Constitution of 1868, art. 109.

⁴ La. Constitution of 1864, Title IV; Kathryn Page, "A First-Born Child of Liberty: The Constitution of 1864," in Billings and Haas, eds., *In Search of Fundamental Law*, 52–69.

⁵ La. Constitution of 1868, Title IV; Charles Vincent, "Black Constitution Makers: The Constitution of 1868," in Billings and Haas, eds., *In Search of Fundamental Law*, 69–81.

⁶ La. Constitution of 1879, Art. 80–95; Ronald M. Labbé, "That the Reign of Robbery Will Never Return to Louisiana: The Constitution of 1879," in Billings and Haas, eds., *In Search of Fundamental Law*, 81–93.

⁷ Miller, *The Louisiana Judiciary*, 58–69, esp. 69.

⁸ La. Constitution of 1898, Art. 84–96; Michael L. Lanza, "Little More Than a Family Meeting: The Constitution of 1898," in Billings and Haas, eds., *In Search of Fundamental Law*, 93–110; Carol D. Billings and Janice K. Shull, *The Louisiana Supreme Court: An Historical Guide* (New Orleans, 2004), 10–12; Miller, *The Louisiana Judiciary*, 69–82.

⁹ Billings, ed., *Historic Rules of the Supreme Court*, 25.

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their basic organization but brought the Eustis Rules up to date with current statutes and constitutional mandates.¹⁰

As to who became justices of the postwar Court, Unionists occupied the bench until 1879. The rest were ex-Confederates, who all welcomed the overthrow of Reconstruction and the return of men like themselves to their former places of authority. Smitten by the mythology of the “Lost Cause” and staunch believers in the God-given righteousness of white supremacy, they stood among the unyielding conservative Bourbon Democrats who seized control of the state after 1877. Not one among the entire lot attained the intellectual stature or the influence of François-Xavier Martin, Alexander Porter, Henry Adams Bullard, George Eustis, or even Edwin T. Merrick. Instead they were well-trained, capable, yet quite unremarkable journeymen jurists.

In the spring of 1865 Governor Michael Hahn appointed a new Supreme Court. He chose William B. Hyman (1814–1884) for chief justice and picked Zenon Labauve, Rufus K. Howell, John H. Ilsley, and Robert B. Jones to fill the four associate slots.¹¹ The Hyman Court got off to a shaky start. Loyalty to the Union cause earned its justices their places but did little to endear them to former rebels. None of them commanded much respect for their lawyerly skills or for their intellectual prowess. The absence of the Court’s archives hampered proceedings for quite some time too. (While the Merrick Court was on the run during the war, the missing records had fallen captive to federal forces that carted them off to Washington, D. C., where they remained until the 1880s.¹²) In spite of these obstacles, the Hyman Court managed to clear numerous holdover cases from before the war, and it took some halting steps toward legal solutions for repairing a collapsed economy before it went out of existence.¹³

First of the native-born chief justices, John T. Ludeling (1822–1890) succeeded Hyman. He had grown up in Monroe, where he read law in the offices of Isaiah Garrett, gained his license, and hung out his shingle. Affection for the Union set him against secession, and he took no active part in the rebellion, though members of his family donned confederate gray. He drifted into the state Republican Party and supported congressional reconstruction, which explains his becoming a member of the convention that wrote the Constitution of 1868. Governor Henry Clay Warmoth appointed him to the Court, where he stayed until 1877.¹⁴

The Ludeling Court continued the task of adjusting to the constitutional revisions that guaranteed equal rights to all persons, and it made significant

¹⁰ Ibid., 27–37.

¹¹ Shull, *The Chief Justices of Louisiana*, 24–28; Barnes F. Lathrop, “Disaffection in Confederate Louisiana: The Case of William Hyman,” *Journal of Southern History*, 24 (1958): 308–18; below, Appendix 1.

¹² The War Department retained custody until Edward Douglass White secured their return after he served on the Court from 1879 to 1880. White was elected to the Senate of the United States in 1891 and took a seat on the Supreme Court of the United States three years later. President William Howard Taft translated him to Chief Justice in 1910.

¹³ There are as yet no comprehensive investigations of the role of the Supreme Court in repairing the state’s economy although Richard Holcombe Kilbourne, Jr., *Debt, Investment, Slaves: Credit Relations in East Feliciana Parish, Louisiana, 1825–1885* (Tuscaloosa, Ala., 1995); Allen Enger, “Valid But Not Enforceable: Decrees Issued by the Supreme Court of Louisiana Involving Contracts for Slaves” (M. A. Thesis, University of New Orleans, 1996); and the concluding chapter of Judith Kelleher Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge, 1994) are suggestive of insights that might emerge from more intensive enquiry.

¹⁴ Shull, *The Justices of the Supreme Court of Louisiana*, 28–32.

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strides in wiping away the vestiges of slavery that remained in Louisiana law.¹⁵ However, not everyone greeted those alterations kindly, *most* certainly not white attorneys and Democrats who fiercely abominated Ludeling's rulings on "racial and public questions."¹⁶ Ludeling personally added to the unpopularity of his court. He became the object of heated criticisms because of his involvement in the impeachment of Governor Warmoth for his shenanigans in the contentious gubernatorial election of 1872. Ludeling muted those attacks after he convinced the state senate not to proceed.¹⁷ His majority opinion in one of the *Slaughterhouse Cases* opened him to charges of corruption, for which he received the condemnation of the Supreme Court of the United States when it overturned his judgment.¹⁸ In effect, he became the symbol of a Court that its haters determined to abolish after Congress abandoned Reconstruction. When the Democrats regained power, Ludeling bowed to the inevitable and left in 1877. Thereafter, the Court usually sided with white supremacists in the General Assembly, most notably when it validated the doctrine of "separate but equal" treatment of black Louisianans, a rule that became the law of the land after 1896 when it received the imprimatur of the Supreme Court of the United States in *Plessy v. Ferguson*.¹⁹ The *Plessy* ruling had the additional effect of paving the road to further Jim Crow laws, such as those that flowed from provisions in the Constitution of 1898 that disfranchised black Louisianans and ensured white domination until deep into the twentieth century.²⁰

¹⁵ Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana*, 289–305.

¹⁶ Henry Plauché Dart, "The History of the Supreme Court of Louisiana," in Louisiana Supreme Court, *The Celebration of the Centenary of the Supreme Court of Louisiana* (New Orleans, 1913), 37.

¹⁷ Wall et al., *Louisiana: A History*, 202–208; Charles L. Dufour, "The Age of Warmoth," *Louisiana History*, 6 (1965): 363.

¹⁸ Franklin, "The Foundations and Meaning of the Slaughterhouse Cases Part 1," 22–27, 39, note 124; Mitchell Franklin, "The Foundations and Meaning of the Slaughterhouse Cases, Part 2," *Tulane Law Review*, 18 (1943–1944): 218–262; Loren P. Beth, "The Slaughter-House Cases Revisited," *Louisiana Law Review*, 23 (1963): 487–505; Ronald M. Labbé, "New Light on the Slaughterhouse Monopoly Act of 1869," in Edward F. Haas, ed., *Louisiana's Legal Heritage* (Pensacola, Fla., 1983), 143–63; Michael A. Ross, "Justice Miller's Reconstruction: The Slaughter-House Cases, Health Codes, and Civil Rights in New Orleans, 1861–1873," *Journal of Southern History*, 64 (1998): 649–76.

¹⁹ *Ex Parte Plessy*, 45 La. Ann. 80 (1892); *Plessy v. Ferguson*, 163 U. S. 537 (1896).

²⁰ Lanza, "Little More Than a Family Meeting," 98–105; Wall et al., *Louisiana: A History*, 255–60; Germaine A. Read, "Race Legislation in Louisiana, 1864–1920," *Louisiana History*, 6 (1964): 379–92.

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VI. New Realities

When the Court celebrated its centennial, speakers, some brief, some not, treated an enthusiastic audience to addresses that touched upon aspects of the Court's first one hundred years. In response Chief Justice Joseph A. Breaux spoke for the Court, exclaiming that in Louisiana "two systems of law, civil and common, were blended." As a result, he continued, "the labors of the bench and bar of that period are still felt. Although a century has passed, during all these years these united systems of laws, civil and common, have come down to us with the impress placed upon them in the early years of the century."¹ In that moment, nostalgia trumped reality. Nothing in Breaux's remarks paid heed to shifts already afoot that would compel the Court to fit it to suit the consequences of tumultuous changes in the economy, politics, and the social fabric that epitomized twentieth-century Louisiana.

Industry pulled people off the land and away from agriculture. An ever more relentless exploitation of oil, natural gas, mineral rights, and other resources allowed giant corporations such as Standard Oil to monopolize much of the new economy and ravage the environment. New Orleans dominated the urban scene, as it always did, but population growth also swelled the state's smaller cities and towns into important regional centers of enterprise. The coming of the automobile forever altered the face of Louisiana. Radio, the movies, and mass advertising spawned not only consumerism, but they also diminished Louisianans' isolation from the rest of the nation. In social terms, Louisianans remained rigidly divided along the color line, largely uneducated, and extremely poor. Catching whiffs of the national Progressive Movement, deeply conservative politicians advocated structural reforms to make a state government that was at once honest, efficient, "modern," and "business like," which would reduce popular discontent with them. Theirs was a species of modest uplift that turned Louisiana into an administrative state that promised ever more benefits at small cost to the electorate. And not least, their flirtation with Progressivism contributed significantly to the time of the Kingfish.²

For the Court the challenge was how to cope. Coping meant devising ways to clear volumes of appeals that sprang in large measure from issues relating to new fields of law—tax law, labor law, workmen's compensation, and social legislation, just to mention the more obvious ones. Coping also meant responding to alterations in the Court's relationship with the organized bar. And coping also meant navigating a highly charged political environment that threatened its independence during the Long era. The decades-long route to the Court's becoming the modern entity we know today was marked by chicanery and rancorous personality clashes. That is to say, by the 1950s, the Court did more than hand down opinions. It sat atop a unitary third branch of state government, and it had primary responsibility for administering the entire judiciary and the organized bar.

Keeping pace with rising numbers of appeals was nothing new, but now national Progressives touted a gospel of efficiency as the best means of improving

¹ The text of Breaux's remarks forms part of the entire record of the ceremonies that appears in volume 133 of the Louisiana Reports.

² Edward F. Haas, *Political Leadership in a Southern City: New Orleans in the Progressive Era* (Ruston, La., 1988); Wall et al., *Louisiana: A History*, 243–308; Matthew J. Schott, "Huey Long: Progressive Backlash?," *Louisiana History*, 27 (1986): 133–45; Samuel C. Shepherd, Jr., "In Pursuit of Louisiana Progressives," *ibid.*, 46 (2005): 389–406; Charles McGovern, *Sold American: Consumption and Citizenship, 1890–1945* (Chapel Hill, 2006).

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state governments. The judicial reformers among them, who belonged to organizations such as the American Bar Association and the American Judicature Society, hawked model state supreme courts that would become more industrious and responsive to the needs of society if only they too were modernized into more efficient bodies. Adding seats around to high benches helped, but the surer, more enduring remedy lay in legislatively redefining supreme courts. That corrective depended upon three cures—unifying entire judicial branches by granting supreme courts broad supervisory responsibility, investing chief justices with duties that effectively made them the judiciary’s principal administrators, and assisting supreme courts with staffs of experts and judicial councils. The result would be competent management and an effective delivery of justice. These ideas appealed to some Louisianans, who as early as the 1910s argued the need for court modernization. Nevertheless, they drew opposition from lawyers and judges statewide, and of those adversaries none was more vociferous or more intransigent than Charles A. O’Niell.³

A Franklin native and twelfth Chief Justice of Louisiana, O’Niell (1869–1951) went to the Court in 1912. Eight years later he became chief and sat in the center chair until 1949, when a spite-filled Governor Earl K. Long forced his retirement. A moderate reformer politically, O’Niell arguably presided over the most partisan Court before or since. Although he earned plaudits for the incisive beauty of his opinions, his identification with progressive politics, and his attacks on Huey Long and his cronies, he had little taste for court modernization, calls for which grew louder during the 1920s. His hostility kept a top-to-bottom reorganization of the judiciary out of the Constitution of 1921. He did support increasing the size of the Court to seven in the expectation that more justices equated with greater efficiency, which proved a vain hope. Subsequent efforts at modernization met with his studied resistance, especially after he chaired the impeachment trial of Huey Long in 1929. O’Niell devoutly loathed everything about the Kingfish. Long reciprocated in spades. Predictably, therefore, O’Niell always regarded modernization as little more than a lightly veiled attack upon him. He was not wholly wrong given that modernization’s most persistent advocate was fellow justice, John B. Fournet, a ferocious Long partisan who joined the Court after his highly controversial election in 1934.⁴

And yet O’Niell also opposed court reform for reasons that had nothing to do with Long or Fournet, but instead were consistent with his approach to judging and to his perception of his place as chief justice. He was very much a jurist of the old school, content to work at his own pace, even if that pace meant long delays between his hearing arguments and his rendering of opinions. The idea of the chief justice as the judiciary’s principal administrator did not sit well with him intellectually, apparently because he regarded administration as a burdensome chore that being chief justice imposed upon him. In a sense he was more a man of the nineteenth century than of the twentieth, and he stood out as a throwback to

³ The foregoing discussion derives from Warren M. Billings, “The Supreme Court of Louisiana and the Administration of Justice, 1813–1995” in Billings, *Magistrates and Pioneers*, 295–314.

⁴ O’Niell has no biographer; though he certainly merits a closer look than he has received to date. Aspects of his background and public career may be gleaned from John H. Wigmore, “Grading Our Supreme Courts: A Tentative Method,” *American Bar Association Journal*, 22 (1936): 231; Paul M. Hebert, “Mr. Chief Justice O’Niell: A Quarter Centennial of Judicial Service,” *Louisiana Law Review*, 1 (1938–39): 797–99; Katherine L. Brash, “Chief Justice O’Niell and the Louisiana Civil Code—The Influence of His Dissents,” *Tulane Law Review*, 19 (1945): 436–54; Conrad et al., eds., *Dictionary of Louisiana Biography*, 2: 619; and Shull, *The Chief Justices of Louisiana*, 56–59.

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an earlier time, which made him an easy target for both Longites and judicial modernizers.

Despite his animus toward court reform, O’Niell could always count upon widespread support from the organized bar. Lawyers who knew him intimately cherished him for his conviviality. He loved, said one of them, “good company, good arguments, good whiskey and almost any kind of fishing.”⁵ Others appreciated his kindness and engaging personality, but his admirers esteemed him most for opposition to Huey Long and his support of the state bar organization in times of trouble.

As for the bar, before the Civil War the New Orleans Law Association (NOLA) was the nearest thing to a statewide bar organization in existence. It suffered horrific losses during the conflict, but it revived in the postwar years.⁶ A private, self-perpetuating, self-governing corporation, it kept a sizeable law library and served primarily as a social club for its members. By the 1880s, the membership numbered less than half of the state’s attorneys, most of whom lived in New Orleans and ranked among city’s most socially prominent residents. The association fell into decline as it became ever more out of touch with a national movement that redefined bar organizations as something other than mere library-owning social clubs. That cause originated in the founding of the American Bar Association (ABA), whose *raison d’etre* was lobbying Congress, state legislatures, and courts to advance the professional and political interests of the legal profession.⁷

NOLA members Henry Plauché Dart, Thomas Jenkins Semmes, and William Wirt Howe enjoyed close relationships with the ABA. (Semmes and Howe were both early presidents of the ABA, too.) Consequently, the three of them strove to advance its agenda in Louisiana, but they made little headway in transforming the NOLA because of the members’ reluctance to follow their lead. Predictably, membership numbers and dues income fell off sharply, which left the library to deteriorate from want of adequate maintenance and decent accommodations. Just at the moment when the NOLA seemed in its death throes, Dart was elected its president. Helped by Semmes and Howe, he reengineered it completely, and in 1899, they turned the NOLA into the Louisiana Bar Association (LBA).

Legally resident in New Orleans, the new LBA, like its predecessor, was a private, self-governing corporation that invited any lawyer in good standing to join, on the condition that he received a favorable vote on his nomination. Federal and state judges automatically became members *ex officio*. They paid no dues or initiation fees, though they could serve as officers. An executive committee of presidential appointees managed all facets of the corporation. Other elements of the charter spoke to Dart’s vision. One committed the LBA to work for the improvement of the standards for bar admissions and legal education. Another provision bound the association to a code of ethics that required the membership to assist the Court in disciplining wayward lawyers. A third called upon members collectively to influence the General Assembly to fund the construction of the Royal Street Court House that would also house the LBA and its library. Although

⁵ Quoted in Shull, *The Chief Justices of Louisiana*, 58.

⁶ The ensuing discussion derives from Warren M. Billings, “A Bar for Louisiana: Origins of the Louisiana State Bar Association,” in Billings, *Magistrates and Pioneers*, 315–32.

⁷ Max Radin, “The Achievements of the American Bar Association: A Sixty Year Record,” *ABA Journal*, 25 (1939): 903–10, 1007–13; 26 (1940): 19–26, 135–41, 227–30, 234, 318–21, 358; Edson R. Sunderland, *History of the American Bar Association and Its Work* (n.p., 1953).

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the charter underwent later amendments, including one in 1929 that changed the name to the Louisiana State Bar Association (LSBA), these basic aims plotted Dart's aggressive, highly political agenda for the future.⁸

That Dart (1858–1934) was the driving force behind that agenda and remained so long after he stepped down from the LBA presidency in 1902 was certainly of a piece with his mark upon Louisiana law and the Supreme Court itself. Born to a Creole mother and an English father, Dart came to adulthood in New Orleans during its troubled postwar years. A foot soldier in the White League, a paramilitary group of ex-Confederates, he worked resolutely to undermine the city's Reconstruction government. The experience instilled in him an intense scorn for black Louisianans, an abiding hatred for Republicans, and an undying contempt for the new order. Drawn to the law, he won his license at twenty-one and matured into a successful corporate attorney and an accomplished litigator who, apart from his practice, developed a long-lasting engagement with the history of Louisiana law. Annual meetings of the LBA gave him a platform from which to voice his version of Old South mythology, his regard for Louisiana's "unique jurisprudence," and his visions of law reform.⁹

His drive to make the LBA the vehicle for improving admission standards and educational requirements was not as novel as it may have seemed at first blush, given that the NOLA had performed likewise in the past, albeit in a less forceful fashion than Dart envisioned. At first he turned to the General Assembly for statutory sanction, only to be refused. He then cajoled the Court into granting the LBA's standing board of examiners the exclusive power to determine who could obtain a lawyer's license. Raising admission standards went hand in hand with the LBA's committee on legal education's efforts toward bettering the quality of legal training. Here the goal was requiring a law school diploma as the basic prerequisite to practice, which was something that drew the enthusiastic support of the law deans at Tulane and LSU until it became a reality in 1923.¹⁰

Dart saw in the code of ethics something greater than a mere criterion for membership in the LBA. He viewed the code as a gauge for taking the measure of professional conduct of *all* Louisiana lawyers, and anyone, LBA member or not, who was found wanting would be subject to whatever correction the association might suggest to the Court. Therefore, imposing the code on every practitioner would not only lead to a better quality of lawyering, it would also magnify the reach and the power of the LBA. Unsuccessful in securing legislative approval for his scheme, Dart again went to the Court, which blessed his plan by rule. Henceforth, the LBA gained a significant amount of control over the entire practicing bar, and whether nonmembers liked it or not, their ability to pursue their livelihood was liable to supervision by an organization in which they had no say.

⁸ Charter of the Louisiana Bar Association, *Proceedings of the Louisiana Bar Association, 1898–1899*, 19–28, and the later revisions are in the *Proceedings of the Louisiana Bar Association, 1900–1934*, *passim*. The members approved the name change in an attempt to "emphasize the state-wide character of the Association." See *ibid.*, 29 (1929): 120.

⁹ Dart lacks a full-scale biography or a detailed analysis of his manifold contributions to the history of Louisiana law. A sketch of his life and career is in Conrad et al., eds., *Dictionary of Louisiana Biography*, 1: 211–12.

¹⁰ Amendments to Rules, Supreme Court of the State of Louisiana, La 152 (1923): vii–viii; Louisiana Bar Association Executive Committee Minute Book No. 3, 9 June 1920–7 March 1924, 137.

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Gentleman-scholar that he was, Dart strove to augment the LBA's library, which was the largest law library in Louisiana. An up-to-date library was an obvious boon to members and an attraction to would-be members as well. Expanded holdings also gave additional impetus for construction of the Royal Street building. Nevertheless, housing a private library in the courthouse at taxpayer expense stood out in sharp relief as a reminder of the advantages enjoyed by lawyers who belonged to the LBA over those who did not. The latter also had cause to resent their taxes supporting the maintenance of the association itself. That antipathy was part and parcel of broader resentments that found voice among wary attorneys who were deeply suspicious of the LBA and what it represented. Country lawyers instinctively distrusted the purposes of an overwhelmingly urban professional society, which explained why many rural attorneys consistently rejected overtures to join the association. Older, less well-schooled lawyers who feared modernity disdained the LBA's push to junk apprenticeship as the principal method of legal education. Others objected for philosophical or practical considerations, whereas for some the LBA's boisterous forays into electoral politics augured dangers that might one day harm their livelihood. Some who belonged to the LBA were dubious too. Country members and those who practiced in Baton Rouge, Shreveport, or Lake Charles had muted voices in the affairs of the association because New Orleans attorneys controlled its principal offices and dominated seats on all its committees.

Such concerns were by no means unique to the LBA, nor were they merely rooted in the Louisiana of the 1910s, 1920s, and 1930s. They began with the origins of the modern bar association movement itself, and they were sources of friction that lawyers across the United States strove to eradicate. In fact, the American Judicature Society came into being for the express purpose of nurturing greater comity among attorneys nationwide. To that end, the AJS favored instituting what it termed "integrated bar associations;" that is, statutorily created state entities to which every attorney must belong. Because erecting such bodies required legislative sanction, the AJS prepared a model bill that it broadcast through bar associations across the United States.¹¹

The leaders of the LBA were slow to take up the cause. Whether to integrate first surfaced officially at the LBA's annual meeting in 1929, the year the LBA renamed itself the Louisiana State Bar Association, when one of its committee reported favorably on the concept but urged additional study. Nothing came of the recommendation, and the cause of bar integration made slight progress. LSBA presidents were slow to embrace the concept because the members were either indifferent or they were hostile because they did not want to associate with black lawyers. In the end, the matter got entangled in a contretemps that ensnared the LSBA and the Court in a mean political contest with Huey Long in the aftermath of the 1934 primary season that seriously undermined the Court's independence.¹²

¹¹ "Redeeming a Profession: Introducing a Practical and Logical Plan for Bar Organization Which Will Enable the Bar to Realize Its Highest Ideals," *Journal of the American Judicature Society*, 2 (1918): 105–11; "Model Bar Association Act," *ibid.*, 111–24.

¹² *Reports of the Louisiana State Bar Association* (1929): 107–10; Charles F. Fletcheringer "Presidential Address," *ibid.* (1930): 135–36, 179; *ibid.* (1932): 165; *ibid.*, (1935–1941): 45.

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VII. The Court Cast Down and The Court Raised Up

Huey Long stood tall in 1934. Comet-like, he streaked across the national scene after he was elected to the Senate of the United States and threatened the presidency of Franklin D. Roosevelt. Back home, his grip on politics remained as firm as it was when he left the governor's office. And so, he anticipated little difficulty in retaining his slim majority on the Supreme Court after the year's primary elections.¹

Of the Court's seven justices, O'Niell, Fred M. Odom, and Wynne G. Rogers formed an anti-Long bloc, whereas Harney F. Brunot, John Land, John St. Paul, and Winston S. Overton were Huey's men. Of them Overton came up for re-election in 1934.² He was certain to draw an opponent, but given his reputation as an able campaigner and as a sound jurist, Long believed there was little likelihood of Overton being defeated. True to everyone's expectation, a challenger appeared in the person of Thomas F. Porter, Jr., a Lake Charles district court judge. Porter was popular with voters and a formidable candidate who had never lost an election. Despite Porter's attractiveness, the odds favored Overton to win, thus allowing Long to retain his majority on the Court. Quite unexpectedly Long's calculus went awry after Justice St. Paul announced his retirement as soon as the Court adjourned for its summer recess.

Long's lapdog governor Oscar K. Allen could not appoint a successor, however. St. Paul's term still had twelve years remaining and, according to a provision in the Constitution of 1921, such a vacancy could only be filled by an election. Open seats always threatened unpredictable results, and in this instance the outcome was even more highly problematic. St. Paul lived in the First Supreme Court District—which embraced Orleans, Jefferson, St. Bernard, St. Charles, St. John, and Plaquemines Parishes—the stronghold of Long's archenemy Crescent City Mayor T. Semmes Walmsley. Seizing the opportunity to break Huey's control of the Court, Walmsley backed New Orleans attorney Walter Gleason, who also drew the immediate vigorous, open support of the LSBA. Long countered by prevailing upon an attractive Fourth Circuit Court of Appeal judge, Archibald T. Higgins, to contest Gleason, and the Kingfish then threw all of his energies behind Higgins.

Fending for himself throughout the forty-five day run up to the primary election, Overton kept to a brutal schedule that divided his time between hearing cases in New Orleans and searching for votes across his constituency. Weekly he drove from New Orleans to Lake Charles and then crisscrossed the rut-filled highways and byways of the eleven mostly rural southwestern parishes that made up the Third Supreme Court District to debate Porter, often as many as four times in a single day. Hard campaigning exacted a fatal toll. Struck by a cerebral hemorrhage, Overton dropped dead on 9 September, two days before the voters were scheduled to go to the polls. Under law the local Democratic Party executive committee should have immediately canceled the election and declared Porter the winner. It did not because its chairman, T. Arthur Edwards, was a long drive away visiting relatives in Texas, and weather prevented him from returning to Lake Charles until a day after the election. Porter won by a margin of two to one. But

¹ On Long's becoming senator and his rise to national prominence, see William Ivy Hair, *The Kingfish and His Realm: The Life and Times of Huey P. Long* (Baton Rouge, 1991), 218–313.

² For a detailed treatment of Overton's election campaign and its aftermath, see Warren M. Billings, "Politics Most Foul? Winston Overton's Ghost and the Louisiana Judicial Election of 1934," in Billings, *Magistrates and Pioneers*, 371–99.

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for reasons known only to him, Edwards held off convening the executive committee to certify Porter as the party nominee until 15 September. That four-day interlude proved just long enough for the Kingfish and his henchmen to prevent Porter from taking his seat.

Long got wind of Overton's death within hours of its happening. Momentarily he did no more than bluster to the press that Porter was unacceptable and hinted that the Legislature might intervene. His foremost concern was beating Mayor Walmsley by getting Judge Higgins elected. After Higgins won his election, Long immediately schemed to keep Porter off the Court. On the morning of 12 September he drove up from New Orleans to Baton Rouge and closeted himself with his chief lieutenants. Together they quickly contrived a two-point plan that took advantage of the opening Edwards had unwittingly given them. First, Long ordered his loyalists on the Third District executive committee to ask Attorney General Gaston L. Porterie for a legal opinion as to the validity of Porter's election, and within hours that request was forthcoming.

Porterie wasted no time crafting his response. He grounded his opinion upon on his reading of the primary act of 1922. Because Overton expired the day he did, his death automatically voided the result of the 11 September poll, and it was therefore necessary to hold another primary ahead of the general election because the law plainly forbade picking a nominee by any means other than a popular vote. Furthermore, Porterie continued, had Overton died a week or more before the election then Porter would legally become the nominee. That provision did not apply because Overton died just two days before the voters went to the polls on 11 September. "Therefore," Porterie asserted, "that provision of the law is read entirely out insofar as this case is concerned, and you are left to the other provisions of the law." He concluded saying where "there is ample time as there is in this case the spirit and purpose of our law is always best served by giving the people the right to an election [, and] I rule that you should do so in this case."³ In finding as he did, Porterie deliberately ignored a 1924 statute which provided that should one of two rivals die, new candidates would have five days to file unless the death happened less than seven days before the primary, in which instance the remaining candidate would gain the nomination.⁴

Armed with the cover of Porterie's ruling, the Longites set the second, more underhanded part of their design into place. They would seize control of the executive committee, which would then call another primary that would guarantee the election of a man of the Kingfish's choosing. This element of the scheme was no secret because the Lake Charles newspaper reported that Long's allies intended to depose Edwards and deny Porter, and the paper opined that the most likely candidate was Lieutenant Governor John B. Fournet. Arthur Edwards remained serene in his belief that nothing of the sort would happen, so he fully expected to certify Judge Porter.⁵

Edwards came in for a rude shock after the committee assembled at noon on 15 September. Porter was there and so were Long, Fournet, and Porterie. Gaveling the meeting to order, Edwards called on C. F. Hardin. Hardin moved to declare

³ Opinion from Attorney General Gaston L. Porterie to George A. Foster et al., 12 Sept. 1934, in Porter v. Conway (No. 33147) case file, Clerk's Office, Supreme Court of Louisiana, New Orleans; La. Acts, 1922, No. 97, 178, 201.

⁴ La. Acts, 1924, No. 215, 394, 397.

⁵ Lake Charles *American Press*, 14 Sept. 1934.

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Porter as the party's duly qualified nominee, but before anyone could second him, J. W. Bolton, a Long man, jumped to his feet and proposed the election of a new chairman and secretary. Edwards ruled Bolton's motion out of order, whereupon Bolton appealed to the committee, which overrode Edwards. Now Bolton nominated J. Cleveland Frugé and L. B. De Bellevue as permanent chairman and secretary, respectively, and his motion carried easily. Frugé took the gavel, turned to Porterie, and asked the attorney general to explain why as a matter of law the committee was compelled to hold another primary. His explanation brought forth the requisite call for an election, to be held on 9 October. At that point, Porter could no longer keep his peace. Jumping onto a chair, he screamed that the nomination was his and threatened to take the committee to court if it denied him what was rightfully his. His antics provoked the Kingfish to retort, whereupon the two of them angrily shouted taunts at one another for some minutes before a flustered Frugé regained order. Then Frugé hastily adjourned the committee until "the 12th day of October, 1934, at 12:00 o'clock Meridian for the purpose of canvassing the returns of [the] . . . primary and certifying the results, etc."⁶

The committee's action forced two choices upon Judge Porter: requalify and run again or go to law. He was enough of a realist to anticipate the outcome of a head-to-head run against the Kingfish's candidate, so he cast his lot in the courts, believing that no judge could reasonably find against him given that right and law were palpably on his side. He promptly enlisted Edward Rightor, P. G. Borron, Charles Vernon Porter, Arsène Pujo, U. A. Bell, C. F. Hardin, Luther E. Hall, Joseph W. Carroll, and Arthur Edwards to make his case. These nine lawyers were among the foremost attorneys in Louisiana, in addition to being prominent leaders in the LSBA. (Bell was the sitting president.) Having no use for Huey Long, they savored their task and fell to it with relish, and by 20 September they were ready to go to court.⁷

As Porter's team drafted their briefs, two events happened that eventually submarined their client's chances of success. The Supreme Court chose Archibald Higgins to fill out the remaining three-and-a-half months of Overton's unexpired term.⁸ A mandate in the Constitution of 1921 compelled O'Niell and his colleagues to fill such short-term vacancies with a judge from somewhere outside the affected Supreme Court district.⁹ Higgins met the requirement, and he was duly sworn in on 18 September.¹⁰ Curiously, neither O'Niell nor any of the other justices ever explained their choice of Higgins. O'Niell could have scotched the appointment because he, Odom, and Rogers could have outvoted their two Longite colleagues. Presumably all five regarded the appointment as a way of giving Higgins high court experience prior to his taking his own seat. Having him on the bench would help in slimming the docket, and no one expected anything controversial to surface in the near future, but they were soon proven wrong.

⁶ Resolution Certifying Porter; Resolution Calling for a Primary Election, Minutes of the Executive Committee Meeting, 15 Sept. 1934, in Porter (No. 33147) case file; *Lake Charles American Press*, 15 Sept. 1934; *Alexandria Town Talk*, 17 Sept. 1934; T. Harry Williams, *Huey Long* (New York, 1969), 735.

⁷ *Lake Charles American Press*, 17, 19–20 Sept. 1934; *New Orleans Times-Picayune*, 19 Sept. 1934; *Reports of the Louisiana State Bar Organization for 1935–1941* (New Orleans, 1942), 2–5.

⁸ Order Appointing Archibald Higgins to Office, 17 Sept. 1934, Supreme Court of Louisiana Minute Book, 44, 8 June 1934–12 Jan. 1937, 29, Clerk's Office, New Orleans.

⁹ Louisiana Constitution of 1921, art. 7, § 7.

¹⁰ Minutes of Higgins's Swearing in, 18 Sept. 1934, in Supreme Court of Louisiana Minute Book, 44, 8 June 1934–12 Jan. 1937, 30, Clerk's Office, New Orleans.

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John Fournet (1895–1984) filed his candidacy papers three days after Higgins’s appointment, thereby corroborating rumors that had circulated since before the reopening of the primary.¹¹ His credentials for the seat were slim to none at all. Born into a St. Martinville family, Fournet earned a degree from Louisiana State Normal School (now Northwestern State University) and taught school in nearby parishes. He enrolled in law school at LSU but withdrew to enlist in the army after the United States entered World War I. Resuming his legal studies, he graduated from LSU in 1920 and opened a practice in Jennings. The deprivations of his own upbringing and those of the people in the region kindled an intense populist impulse that drove him into politics. In 1928 he won a seat in the General Assembly and gravitated into Long’s camp. Allying with the Kingfish led to his being speaker of the house and to the number two slot on the Oscar K. Allen gubernatorial ticket in 1932. His unswerving faith in the social benefits of Longism and his devout desire to defeat reactionaries such as the likes of Tom Porter convinced him to go after Overton’s empty chair. Still young—he was only thirty-nine—he had no judicial experience. Nevertheless, he possessed the one qualification that really mattered. He belonged to Huey Long.¹²

On 20 September, Porter’s attorneys appeared in the district courts in Ville Platte and Baton Rouge. At Ville Platte they pleaded with Judge Benjamin H. Pavy to void the primary. Porter’s nomination was a *fait accompli*, they argued, and to deny him infringed his constitutional rights as a Louisianan and a citizen of the United States. Pavy, a virulent enemy of Long’s, did not hesitate in setting the case for hearing on the 27th. In Baton Rouge, Porter’s lawyers petitioned Judge W. Carruth Jones for a temporary restraining order to prevent Secretary of State Conway from “printing or publishing on the official ballots to be used in the general election . . . the name or names of any person or persons other than” that of Porter. Judge Jones granted the petition forthwith, but he gave the state five days to show cause why after further trial his temporary restraining order should not become permanent.¹³

Attorney General Porterie appeared for Secretary Conway on 25 September. He claimed that Porter’s suit should be rejected on procedural grounds given that Judge Jones lacked the authority to intervene in what he described as a purely political matter. Regarding the actual merits of the petition, Porterie sarcastically argued they were mere flights of fancy totally without foundation in law or public policy. Thus, for “strong social, political and philosophical reasons,” Jones had no choice other than to dismiss the plaintiff’s petition. Judge Jones decided otherwise and ruled at once for Porter. He concluded his judgment saying, “It is argued that the people have a right to elect their candidates. Is it fair to make the man who made a campaign make it all over again with different candidates and different

¹¹ Letter from John Fournet to J. Cleveland Frugé, 21 Sept. 1934; Fournet’s Notice of Intent to Run, 21 Sept. 1934, in Porter (No. 33147) case file.

¹² Fournet has no biographer. Brief sketches of him are in Conrad et al. eds., *Dictionary of Louisiana Biography*, 1: 317; Williams, *Huey Long*, 288–89. When my colleague Raphael Cassimere, Jr., and I interviewed Fournet at length in the 1970s, he vehemently insisted that the benefits Long had bestowed upon Louisianans vastly outweighed the Kingfish’s faults and indiscretions, both of which he claimed were greatly exaggerated by Long’s enemies. He also pointedly remarked on how growing up more or less poor made him into a populist who looked to politics as the means to a better Louisiana. Tapes of those interviews are in the possession of Professor Cassimere.

¹³ Petition of Thomas F. Porter, Jr., 20 Sept. 1934; Order for the Appearance of J. Cleveland Frugé et al., 20 Sept. 1934; Order for the Appearance of Gaston L. Porterie, 20 Sept. 1934; Petition of Thomas F. Porter, Jr., 20 Sept. 1934; Order for the Appearance of E. A. Conway, 20 Sept. 1934, Porter (No. 33147) case file.

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issues? I believe that the law contemplates that there shall be an end and when death intervenes it is the end of it. The law is clear to me. The election is over and Judge Porter is entitled to the nomination.”¹⁴ Porter immediately appealed to the Supreme Court.¹⁵

On the morning of the 26 September, the lawyers gave their briefs to the clerk of the Supreme Court, who distributed copies to the justices, and within hours, Porter obtained his writ of certiorari. The writ stayed Judge Jones’s injunction until the Court decided what to do next. Three justices, Brunot, Land, and Higgins, set the return date on the writ for 26 November, meaning that Porter could expect no redress until three weeks after the general election. O’Niell, Rogers, and Odom could only sputter in frustration because they lacked the crucial four votes the court rules of the day stipulated were necessary for the Court to vacate the writ or to reset the hearing date. Long’s investment in Higgins had paid a quick dividend, and O’Niell surely regretted his blessing Higgins’s interim appointment.¹⁶

Brunot, Land, and Higgins acted within the law. The Court enjoyed sole discretion in determining when to grant writs of certiorari, which no one denied, and it was well within the justices’ prerogative to schedule hearings on any day they pleased. What was legal was not necessarily fair, but fairness was not at issue. Holding another primary, as Long wanted, was the central concern. Hence, Brunot, Land, and Higgins turned the rules to Huey’s advantage. There would be a primary on 9 October, Fournet would win, and the Supreme Court would stay in Long’s pocket.

Disappointed but unbowed, Tom Porter would not quit. On learning the news out of New Orleans, he filed for the primary and withdrew his suit against the executive committee. The outcome was never in doubt. Long did most of the campaigning for Fournet, who rarely said much on the stump. Porter drew endorsements from the LSBA and lawyers across Louisiana. Several district judges loudly back him as well, none more vociferously than Benjamin Pavy. Pavy lambasted the Supreme Court for resorting to the “trickery and corrupt devices” by which the “three Long-controlled justices” had stolen Porter’s nomination, but he lauded O’Niell as a “great and honorable man” for opposing his Longite colleagues. None of that altered the outcome. Fournet comfortably carried the district by a margin of more than four thousand votes. Then on 26 November, acting on Attorney General Porterie’s motion, the Court dismissed Porter’s suit, and Tom Porter went away empty-handed.¹⁷

But that was not the end of the story.

¹⁴ Petition of Thomas F. Porter, Jr., 20 Sept. 1934; Order for the Appearance of J. Cleveland Frugé et al. (20 Sept. 1934); Order for the Appearance of Gaston L. Porterie, 20 Sept. 1934; Petition of Thomas F. Porter, Jr., 20 Sept. 1934; Order for the Appearance of E. A. Conway, 20 Sept. 1934, Porter (No. 33147) case file.

¹⁵ Brief of Gaston L. Porterie *ibid.*; Judgment of Judge Jones, *ibid.*; Notice of Appeal of Gaston L. Porterie, *ibid.*; New Orleans *Times-Picayune*, 25 Sept. 1934; Lake Charles *American Press*, 25 Sept. 1934; New Orleans *Times-Picayune*, 26 Sept. 1934.

¹⁶ Petition of Gaston L. Porterie for a Writ of Certiorari, Prohibition, and Mandamus, 26 Sept. 1934; Memorandum of Joseph W. Carroll and Luther E. Hall Opposing Granting of Writs; 26 Sept. 1934; Writ of Certiorari to W. Carruth Jones, 26 Sept. 1934, Porter (No. 33147) case file; Porter v. Conway, 159 So. 725, 726 (La. 1934) (Odom, J., and Rogers, J., dissenting); Porter, 159 So.726 (O’Niell, C. J., dissenting); Porter, 159 So.740.

¹⁷ Notice of Intent to Run of Thomas F. Porter, 26 Sept. 1934, in Porter (No. 33147) case file; Motion of L. L. Perrault, 28 Sept. 1934, *ibid.*; New Orleans *Times-Picayune*, 4 Oct. 1934. Between 26 Sept. and 9 Oct. 1934.

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A few weeks after the primary, eight prominent members of the LSBA filed a written complaint with the executive board demanding the removal of Brunot, Higgins, and Land from the association. They alleged that in denying Porter a timely hearing, the three justices wittingly robbed him of his seat on the Court and deprived him of any recourse at law. Their action not only sullied their solemn oath of office but also dishonored them, the Court, and the LSBA. It was therefore incumbent upon the executive board to remove them. Despite some objections, the board accepted the complaint and assigned it to a special committee whom it charged to look into the matter and to come up with an appropriate response. Reporting its findings in June 1935, the committee recommended dismissing the charges without prejudice, though it praised the complaining lawyers for their “high sense of duty” and “commendable courage.”¹⁸

The original complaint against Brunot, Higgins, and Land finally provoked the Long crowd to settle scores with the LSBA. Long and the association were never friendly, and his dislike simmered after it expelled Gaston Porterie in 1932. Its support of Walter Gleason and Tom Porter stoked his resentment, and following Fournet’s election, neither he nor his lieutenants inclined to letting bygones be bygones. Instead they aimed to destroy the LSBA once and for all time, but in a way cloaked in law and modernity. When Governor Allen called the legislature into special session in December, among the legislation he proposed was a law to create a new bar association. The resulting State Bar Act of 1934 established a public corporation of lawyers called the State Bar of Louisiana (SBL) and obliged all licensed attorneys to become dues-paying members or forfeit their right to practice. Executive authority resided in the president and a board of governors, chosen from each of the state’s congressional districts. Allen would pick the initial president and board, but the voters instead of the members would elect their successors. The statute invested the board with the power to fix rules of professional conduct, to correct bad lawyers, and to set criteria for legal education. It also put the SBL in charge of admissions to the bar and the bar examination itself. Those changes eroded prerogatives of the Supreme Court that had been entrenched in fundamental law since 1813. Of equal importance, the act severed the tie between the Court and the LSBA, which was the primary purpose of the statute and a smart slap at O’Niell as well. O’Niell grudgingly conceded to that which he could not overbear, and the rules of court were revised to conform to a law of dubious constitutionality.¹⁹

The look of the bar act approximated the American Judicature Society’s model bill, although it appears to have been patterned more nearly on a California law. Despite Longite intentions, during its brief existence the SBL never lived up to its purpose. Governor Allen appointed Gaston Porterie as the first president, and he was followed in turn by David Ellison and Warren Comish. The SBL held a single convention and issued only one volume of proceedings. Nonetheless, to judge from its one extant minute book, the sole reason the board of governors ever met was to

¹⁸ Complaint of Burt W. Henry, Esmond Phelps, J. Zach Spearing, Charles F. Dunbar, Jr., Charles F. Fletcheringer, Edwin T. Merrick, J. Blanc Monroe, and Monte M. Lemann, 19 Oct. 1934, Executive Committee Minute Book, 2 June 1934–June 1937, 377–79, 380–434, 431–32, Louisiana State Bar Association, New Orleans. Spearing and Fletcheringer were past presidents of the association. Merrick was a son and namesake of a former chief justice. Phelps and Dunbar were partners, as were Monroe and Lemann. Lemann also became president of LSBA.

¹⁹ La. Acts 1934, 2d Ex. Sess., No. 162; 180 *La. Reports* ix (1935).

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approve admissions to the bar. In short, the SBL failed to develop into a wholly functioning organization that met the professional needs of its members.²⁰

As soon as the bar act came into force, state officials promptly threw the LSBA and its prized library out of the Royal Street courthouse. The cost of relocating and paying for new office space sapped the treasury to the point of eventually forcing the library's sale to a book vendor, whose disposal of items piecemeal, sadly, broke up the collection.²¹ Grievously diminished, but by no means unbowed or impotent, the LSBA would not go away. It publicly attacked its rival and successfully used its influence with the American Bar Association to dissuade the ABA from recognizing the SBL. The American Judicature Society condemned the SBL too, though it advised "every decent lawyer" in Louisiana "to strive to make the official state bar serviceable and to plan for improving its form at the earliest opportunity." Annual meetings were occasions to rebuke the SBL, and the officers missed no opportunity to castigate their rival. For all of that, a poignant reality remained. Loyalty to the LSBA hit members in their pocketbooks. If they wished to continue practicing LSBA members had to pay to belong to the SBL. Money for dues to two organizations was hardly plentiful during the Great Depression, and the membership fell off.²²

Dissatisfied with the situation as it stood, a group of younger attorneys sought to merge the two rival organizations. Headway was slow to develop, given the animosities and the baggage that both societies carried, but it picked up momentum as the 1930s drew to a close. Long's assassination, Porterie's appointment as a federal judge, the Louisiana Scandals of 1939–1940, and the election of a reform governor, Sam Houston Jones, paved the path of unification.²³ When Governor Jones addressed his first legislature in 1940, he called for annulling the State Bar Act of 1934. Responding quickly, the representatives and senators passed a bill that memorialized the Supreme Court to use "its inherent powers" to reorganize the bar as a corporation to be called the Louisiana State Bar Association, which Jones endorsed into law on 9 July 1940.²⁴

Chief Justice O'Niell picked fifteen lawyers from around Louisiana and charged them to prepare the corporate charter and other necessary documents. The committee designed the new association as a compulsory but private corporation that would be self-regulating and answerable to the Court's oversight. It borrowed elements from the way the SBL was organized. The board of directors would be drawn from across the state and the law schools. Members, not the

²⁰ "An Address Delivered by Hugh M. Wilkinson . . . , Jan. 31st. 1935," *Reports of the State Bar of Louisiana for 1934–1935*, 1 (1935): 159–176, "President's Address," *ibid.*, 18. The SBL minute book is in the LSBA archives.

²¹ Claitor's in Baton Rouge bought the collection. Some years before Claitor's burned in 2010, I enquired if someone inventoried the collection at the time of the purchase only to be told that if there ever was an inventory it no longer survived. Consequently, there is no extant record of what was once the oldest, largest law library in Louisiana.

²² "Senator Long's Louisiana Bar Act," *ABA Journal*, 20 (1934): 744; "Statutory Organization for Louisiana Bar: Legislature Adopts Act Intended to Deal with the Profession on a Political Basis," *Journal of the American Judicature Society*, 18 (1934–1935): 110–11; *Bar Reports, 1935–1941*: 45, 46–48, 14–15.

²³ Wall et al., *Louisiana: A History*, 311–20.

²⁴ La. Acts 1940, No. 54. The text of the repealing statute is basically that of a resolution which the LSBA passed at its annual meeting in April 1940, *Bar Reports, 1935–1941*, 245–46. The Court's order for the committee, its enabling orders, the new LSBA's charter of incorporation, and by-laws are all conveniently printed in *Report of the Louisiana State Bar Association for 1941*, 1 (1942): 91–135. See also, Pike Hall, Sr.'s presidential address in *ibid.*, 4–19.

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public, would elect the officers. The justices added modifications of their own before they adopted the draft charter by rule on 12 March 1941, and a week later they named the first officers of the new association. In April, the old LSBA convened in Lake Charles to dissolve itself. Three months later the SBL ceased to exist too.²⁵

With that the LSBA became a modern entity that spoke to the professional interests of all lawyers in the state, a role that it continues to play. The Supreme Court regained its supervisory powers over the bar, no doubt to the satisfaction of Chief Justice O’Niell. But the Court and the rest of the judiciary were still unreformed. John Fournet would change that.

²⁵ *Report of the Louisiana State Bar Association for 1941*, 1 (1942): 91–135.

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VIII. Fournet's Innovation

With the exception of the judge's intimates and Huey Long, no one held great expectations for John Fournet when he went to the Court in 1935. To the bitterest of his enemies, he was merely a hack politician who had stolen the seat that rightfully belonged to Tom Porter. To his less virulent opponents, he was a legal nobody. To other critics he was little more than an undistinguished journeyman lawyer. The course of his career on the bench gave lie to those characterizations.

Shortcomings he had, but Fournet was no blockhead. Alert to new possibilities and modernist to the core, he faced forward and was un-sentimentally "altogether too busy for nostalgia."¹ Sharp wit, feistiness, and a marked capacity for intellectual growth complemented political shrewdness, patience, and flinty resolve that lay behind a single-minded commitment to the cause of judicial modernization. "Modernizing" for him involved a detour from "the paths our predecessors trod in solving early problems surrounding their efforts to take the courts to the people of our sparsely settled state . . . and set our sights upon the problems surrounding innovations that must be devised to care for the people who today find their way to the courts in ever-increasing numbers. And this must be done in the expeditious and inexpensive manner that lies at the very heart of the meaning of justice, so that to the people of Louisiana justice will never be so delayed or so costly as to be denied."² His success was an achievement that surely ranked him equal of, say, the likes of François-Xavier Martin or George Eustis.

Just when Fournet first began actively working on reform is an open question. He claimed to have taken up the task quite soon after his swearing in.³ His assertion seems a bit improbable given his position during his first fifteen years in office. At the outset of his tenure, he was the least senior of his colleagues, and like any new member, he had to master the routines of being a justice, which was certainly daunting for an inexperienced jurist, even a quick study such as he. Hearing cases and writing opinions took time too.⁴ Forming working relationships with the rest of the Court was also a necessity. O'Niell was a lost cause, as he well knew, and he needed to figure ways to work around him. Who among the others might be allies was not immediately apparent, but whoever they were, he had to identify and cultivate them. Because of the State Bar Act, there was damage to repair if he expected to bring lawyers, especially standoffish members of the LSBA, into his fold as well. Long's assassination in September 1935 affected him. He was present when Dr. Carl Weiss fired at the Kingfish and narrowly escaped being struck by stray bullets as Long's bodyguards shot Weiss to pieces, and he kept a low profile for quite a while afterward.

The first visible evidence of his reforming activities occurred around 1936 or 1937 as the result of four modest but important steps that changed the way the Court conducted its business. Fournet persuaded his colleagues to take three of them via their rule making authority. One was their decision to docket no more

¹ John B. Fournet, "The Reorganization of the Louisiana Judicial System," *Southwestern Law Journal*, 17 (1963): 78.

² John B. Fournet, "The Problems of the Road Ahead—The Duty of the Courts," *Louisiana Reports*, 245: 161, 163.

³ Fournet, "The Reorganization of the Louisiana Judicial System," 78.

⁴ Between 1935 and 1949, Fournet wrote 463 opinions. This total derives from a Westlaw search JU(FOURNET) & da(aft 1935 & bef 1951) % CHIEF-JUSTICE run in LA-CS for me on 10 Nov. 2012 by Marie Erickson, sometime Research Lawyer-Librarian, Law Library of Louisiana.

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appeals than they could hear on any given day. The second was a mandate that arguments be kept within “reasonable bounds.” Third, continuances were no longer granted willy-nilly but only for the “most valid and compelling causes.” The fourth step involved hiring research assistants to help the justices, but that one was contingent upon legislative action. His quiet lobbying toward that goal bore fruit in 1938 when the Legislature funded the first permanent position of law clerks in the history of the Court. (Fournet also won approval for the Courts of Appeal to employ law clerks as well, which gained him a marker with the appeals court judges.)⁵

The election of Governor Sam Jones and a reform-minded legislature yielded the adoption of a criminal code, which in turn inspired Fournet’s hopes for a constitutional convention that might recast the judiciary.⁶ Those hopes faded, and so Fournet campaigned to secure changes piecemeal. In 1942, the LSBA, with his blessing, floated a proposal for a judicial council that would advise the Court on how to effect improvements in administrative and other procedures.⁷ After that proposal came to naught, he kept the idea alive by arguing long and hard about the virtues of modernization with individual lawyers, lower court judges, or anyone else who lent him an ear. Then in 1948, he chaired the LSBA’s section on judicial administration and got its approval of another resolution requesting the Court to establish a judicial council. O’Niell would have none of it.⁸

Within the space of a year, however, the balance finally tipped toward Fournet. Running unopposed in 1948, he won reelection to a second term. By then retirement and death had seen off the oldest associates, and Fournet was now in line to succeed O’Niell. Governor Earl K. Long hastened the aging chief out to pasture too. Possibly with Fournet’s connivance, he got the Legislature to pass a constitutional amendment that would force O’Niell to leave as soon as the voters approved it.⁹ O’Niell turned eighty in September 1949 and stood down. Shortly thereafter Fournet swore his oath as the Court’s thirteenth chief justice.

Empowered by his new office, Fournet wasted little time convincing his colleagues to found his long-desired judicial council. By the spring of 1950 he had moved all the necessary entraining machinery in place, and on 3 May the Court created the Judicial Council by rule, but there were no funds to staff it or to support its work.¹⁰ It took the next four years for Fournet and others to convince the Legislature to underwrite the Judicial Council. Funding at last enabled the appointment of a judicial administrator and twenty-six councilors who hailed from the courts, the Legislature, the Louisiana State Law Institute, the LSBA, and the

⁵ Fournet, “The Reorganization of the Louisiana Judicial System,” 78–79; La. Acts 1938, No. 12.

⁶ For the development of the code see J. Denson Smith, “The Louisiana Criminal Code (Its Background and General Plan),” *Louisiana Law Review*, 5 (1942–44): 1–5 and J. Denson Smith, “How Louisiana Prepared and Adopted a Criminal Code,” *Journal of Criminal Law and Criminology*, 41 (1950): 125–35. Smith was a member of the team who drew up the projet for the code at the direction of the Louisiana State Law Institute.

⁷ LeDoux R. Provosty, “The Program for 1942–43,” *Louisiana Bar*, 1, No. 3 (July 1942): 2–3.

⁸ John B. Fournet, “First 10 Years as Administrative Officer of the Louisiana Supreme Court,” *Louisiana Bar Journal* 7(1959): 14.

⁹ A 1938 constitutional amendment set the mandatory retirement age for judges at seventy-five, but it permitted sitting ones who were older to remain until their eightieth birthday. (La. Acts 1938, No. 383, adopted 8 Nov. 1938.) However, the constitutional amendment Gov. Long proposed in 1948 would have compelled any judge who had attained the age of seventy-five to retire on the spot (La. Acts 1948, No. 549), but the voters turned it down.

¹⁰ *Louisiana Reports* 219 (1951): xciv–xcvi; Fournet, “First 10 Years as Administrative Officer of the Louisiana Supreme Court,” 14–16.

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public at large. True to its charge, the Judicial Council gathered information on conditions throughout the entire judiciary, and those data aided in the passage of constitutional amendments and statutes that radically revamped everything.¹¹ As a result the Supreme Court was relieved of hearing all but the most important civil appeals while the rest were channeled to the Courts of Appeal. Those courts gained additional judges as well.¹² The Court also emerged with stronger, broader supervision of the lower courts that made the chief justice the principal administrator of the entire system. These expanded administrative duties elevated the importance of the Judicial Council as the Court's main advisor and its source of the statistical data that Fournet always relied on to bring off changes. The success of the Council opened the way to the territorial realignment of the three existing Courts of Appeal, the creation of a fourth in 1960, and the addition of other administrative entities which assisted the justices in specific areas of the Supreme Court's enlarging supervisory responsibilities. And of singular importance to Fournet, restructuring finally enabled his court to clear its docket for the first time in half a century, and to keep pace thereafter.

Fournet's taste for modernization manifested itself in other ways. Working with a special committee of the Judicial Council, he promoted the drafting of canons of judicial ethics that came into force in 1960. At about the same time, he encouraged a substantial revision in the bar admission requirements that a task force of deans and law school faculties, joined by representatives from the LSBA, drew up. Earlier he worked out an arrangement whereby the Court took possession of the state law library, thereby filling a void that had existed since the expulsion of the voluntary LSBA library from the Royal Street courthouse. That acquisition became the foundation of the present Law Library of Louisiana and the hiring of a staff of professional law librarians. He backed the construction of a new courthouse at 301 Loyola Avenue, and the building became the visible embodiment of all he had striven to accomplish. Fournet admitted as much when he remarked that whereas "the old Civil Courts Building in the French Quarter . . . was a fitting symbol of the old order, [the] new Supreme Court Building . . . in the Civic Center, of the most modern and advanced design, became, upon its completion in 1958, a fitting symbol of the new."¹³

In 1962, Fournet faced reelection. Now sixty-seven, if he won a third fourteen-year term, he could only serve until 1970, when he reached the mandatory retirement age of seventy-five. He chose to run, and believing that no one would oppose him, he anticipated an easy campaign. To his surprise, he drew two opponents. Although he outpolled both in the first primary, his margin of victory was below fifty-percent, so he faced a runoff. The second primary turned into quite a struggle, but Fournet held his office, in the words of the Baton Rouge evening newspaper, "by a very narrow squeak."¹⁴

An aging Fournet lost none of his zest for reform. Some of the things he promoted in his final years represented refinements on earlier efforts, while others

¹¹ George W. Pugh, "The Work of the Judicial Council," *Louisiana Bar Journal*, 4 (1956): 39–43. The Council's work can be traced more closely through its annual reports, copies of which are among the holdings in the Law Library of Louisiana. Its part in judicial modernization is yet another aspect of the Court's history that awaits a more intensive inquiry than is possible in this sketch.

¹² C. Jerre Lloyd, "A Study of the New Appellate Structure," *Louisiana Law Review*, 23 (1963): 240–46.

¹³ Fournet, "The Reorganization of the Louisiana Judicial System," 84.

¹⁴ Baton Rouge *Morning Advocate*, 30 July 1962, 6A; Baton Rouge *State-Times*, 4 Sept. 1962, 4.

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broke new ground. Among the former, he encouraged the Louisiana Law Institute's revision of the Code of Criminal Procedure, which the Legislature enacted in 1966; among the latter, he backed a 1968 constitutional amendment that created the Judiciary Commission to deal with alleged violations of the canon of judicial ethics.¹⁵ These later efforts at modernizing had their practical side that was of a piece with his career-long quest for effective ways of adjusting law, practice, and administration to the ever-shifting imperatives of Louisiana's mutable polity. By his hand, the high bench turned into a potent entity featuring a collection of related agencies that supervised every phase of the entire judicial branch and made the chief justice the system's premier administrator. Put another way, Fournet convinced Louisianans that better administration through the judiciary resulted in the speedier, more honest and equitable dispensation of justice, while infusing the Court with a marked willingness to experiment with new ways of improving its expanded responsibilities.

¹⁵ Dale E. Bennett, "Louisiana Criminal Procedure—A Critical Appraisal," *Louisiana Law Review*, 14 (1953–54): 11–35; Dale E. Bennett, "Revision of Louisiana's Code of Criminal Procedure—A Survey of Some of the Problems," *ibid.*, 18 (1958): 383–413; Dale E. Bennett, "The 1966 Code of Criminal Procedure," *ibid.*, 27 (1966–67): 175–230.

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IX. The Modern Court

Its penchant for experimentation gained national recognition for the Court, and innovation has become ever more commonplace since the 1970s. None of the justices thought it should be otherwise because as a successor of Fournet's, Joe W. Sanders, observed when he addressed the Legislature in 1978, "[our] system of justice is never finished. It must be conditioned and improved."¹

Sanders proved to be quite an innovator in his own right during his five-year tenure as chief justice. In that relatively short space of time, he personally rewrote Fournet's original canons of judicial ethics, which the Court issued as the Code of Judicial Conduct. He appointed standing committees for planning and for the continuous revision of the court rules. Seeing the need for better-trained judges, he set up the machinery for the development of a bench book for trial judges and the establishment of the Judicial College. He instituted the publication of a bi-monthly judicial newsletter and the practice of the chief justice delivering a "State of the Judiciary" address to the Legislature, both of which he regarded as vital avenues of publicizing the work of the courts to core stakeholders. With his blessing, the Court also struck a cooperative agreement with the University of New Orleans that allowed for the deposit of its historic records at the university, thereby ensuring preservation and convenient access to the state's single greatest collection of legal archives. That deposit subsequently led to his naming a broadly based ad hoc committee that prepared a comprehensive survey of lower court records. This survey laid the groundwork for ongoing explorations into the necessary, but complex, problem of judicial records management.²

But for falling foul of Governor Edwin W. Edwards, Sanders very likely would have contributed similar innovations had he not abruptly left the Court in December 1978. That spring, Edwards took umbrage after Sanders and three of his brother justices narrowly overruled a lower court libel judgment that favored Baton Rouge police chief Howard Kidder. Such was the governor's pique that he loudly threatened to block the Court's legislative request for an appropriation for more law clerks. He also publicly opposed Sanders's reelection and went so far as to try to line up an opponent. Sanders probably could have withstood the challenge. However, fear of losing much-needed funds for the Court and concern that an emboldened Edwards might take a page from Huey Long's playbook and go after other members of the Court with whom he disagreed caused Sanders to step down. Some questioned Sanders's decision and bemoaned the intimidation of the Court, but in the end, Edwards calmed down and the dust-up had no lasting effect upon the Court.³

Well before Sanders's departure, the Court was inundated by a rising tide of criminal appeals. The cause was twofold—an increase in the crime rate and the fact that all convictions could be appealed directly to the Court, as had been the

¹ Annual address of Chief Justice Joe W. Sanders to the Legislature, 2 May 1978, quoted in Shull, *The Chief Justices of Louisiana*, 78.

² Remarks of Tom H. Matheny, *Testimonial by the Supreme Court of Louisiana honoring Chief Justice Joe W. Sanders upon his retirement from the Supreme Court of Louisiana, Thursday, December 21, 1978*, 366 So. 2d 6; Agreement between the Court and the University of New Orleans, Nov. 1976, copy on file in the Department of Louisiana & Special Collections, Earl K. Long Library; Warren M. Billings, et al., "Towards the Creation of a System of Records Management for the Louisiana Judiciary," report submitted to Joe W. Sanders, Chief Justice of Louisiana, 15 Mar. 1978.

³ *Kidder v. Anderson, La.*, 354 So. 2d 1306; *New Orleans States-Item*, 1 April 1978, A-5; texts of Phil Johnson, *WWL-TV Editorials*, 22 and 28 March 1978.

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practice ever since 1845. To gain some control over the situation, the justices set up the Central Staff in 1978. Initially, the Central Staff reported on which cases should be diverted to the summary docket and which ones should be set on the regular docket. (The latter included capital appeals and causes in which the constitutionality of a statute or ordinance was at issue.) Creation of the Central Staff was an improvement, but it was more a stopgap than a permanent solution. Chief Justice Frank Summers acknowledged as much in his address to the Legislature. The remedy he urged was vesting the Courts of Appeal with criminal jurisdiction, but that required a constitutional amendment. Just such an amendment won voter approval in 1980, and two years later the Courts of Appeal were empowered to take appeals in non-capital felony cases. Thereafter, the Central Staff became primarily a screening unit that prepares reports on writ applications which request the justices to exercise their supervisory jurisdiction to review court of appeal decisions in criminal matters, the role it continues to play.⁴

In the 1980s, when the Court adopted a sophisticated system of automated records management, it ventured gingerly into the brave new world of electronic publication and a digital format for the instantaneous transmission of decisions to both print and electronic publishers. Inherent in these advances was the capability of archiving opinions in publicly accessible electronic databases, which was in turn an outcome that could render the law widely available, free or at nominal cost, to more and more users throughout the state and the nation at large. Dazzling advances in computer hardware and information technology, which happened at blinding speed, raised exquisitely vexing issues of access, authentication, security, copyright, commerce, and professional need. The Court took a stab at reconciling some of these concerns in 1993 by mandating the use of a public-domain format for citing its electronically published decisions. Thereby it was the first court in the nation to assert that access to its records, which are public documents, could not be restricted by the intellectual property claims of private vendors. Ever since, and like everyone else, the Court struggles to accommodate to an inescapable world of bits and bytes that controls the destiny of all things great and small.⁵

The venture into the electronic universe entailed upon the Court substantial investments in equipment and staff as well as a need to find the space to house both. Room in the Loyola Avenue courthouse was already at a premium given the growth of personnel in other departments, so the necessity for more space grew more pressing. Renting offsite provided one solution, albeit an inconvenient and pricey one. Rejiggering space in the courthouse, such as converting the lounge in the staff women's restroom into an office for a female assistant attorney general, was another. (She quickly came to be known affectionately as "the outhouse counsel!") What to do was first broached formally during the tenure of Chief

⁴ Shull, *The Chief Justices of Louisiana*, 81; Acts 1980, No. 843, amending Article 5 of the Constitution of 1974; *Justice at Work: The State of Judicial Performance in Louisiana, 2009–2010* (New Orleans, 2010), 9.

⁵ Louisiana Supreme Court Rules, Part G, Section 8, "Citation of Louisiana Appellate Decisions," adopted 17 Dec. 1993, effective 31 Dec. 1993, mandatory on 31 July 1994; Byron D. Cooper, "Anglo-American Legal Citation: Historical Development and Library Implications," *Law Library Journal*, 75 (1982): 3–33; L. Ray Patterson and Craig Joyce, "Monopolizing the Law: The Scope of Copyright Protection for Law Reports and Statutory Compilations," *UCLA Law Review*, 36 (1989): 719–814; Carol D. Billings, "Adoption of New Public Domain Citation Format Promotes Access to Legal Information," *Louisiana Bar Journal*, 41 (1993–94): 557–58; Chief Justice Pascal F. Calogero, Jr., "The Louisiana Public Domain Citation Format: How It Came to Be and What It Has Accomplished," paper delivered at the 88th annual meeting of the American Association of Law Libraries, Pittsburgh, Pa., 17 July 1995.

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Justice John A. Dixon, Jr. In 1980, Dixon, along with several staff and outside advisers met with Dennis Stine, Governor Buddy Roemer's commissioner of administration, to explore possibilities. Dixon, whose home away from home was a flat in the Lower Pontalba Building, favored returning to a refurbished Royal Street courthouse. He got his way, and thus began the Royal Street project, but it was his successor, Pascal F. Calogero, Jr., who finished it.

Calogero, who came to the Court in 1973, moved to the center chair seventeen years later and gave it up in 2008. A committed reformer, as chief he oversaw creation of the Louisiana Indigent Defender Board, the Civil Staff,⁶ a regular strategic planning process for the judiciary, reforms to the juvenile court system, and a community relations department, among other improvements. Helped unstintingly by attorneys Eldon E. Fallon and the late James J. Coleman, Sr., Calogero brought off his most visible accomplishment—completion of the Royal Street project. In May 2004, the Court and its departments returned to their former home, which also houses the Law Library of Louisiana, the Fourth Circuit Court of Appeal, a staff office for the attorney general, and a handsomely endowed museum devoted to the history of the Supreme Court and the Louisiana judiciary in general. That October, a ceremony, which featured as its principal speaker Justice Sandra Day O'Connor of the Supreme Court of the United States, marked the formal dedication of the building.

There were dramatic changes in the composition of the Court on Calogero's watch as well. In 1992, the Court got its first female member after voters elected Catherine D. Kimball to a seat. The next year, as a result of a federal consent decree, the late Revius O. Ortique, Jr., became the first African-American justice, and upon his retirement, Justice Bernette J. Johnson became the first African-American woman to be elected.⁷ Justice Jeannette Theriot Knoll joined the Court in 1997, so that the bench consisted of three women and four men. When Justice Kimball replaced Calogero in 2009, she became the first female Chief Justice of Louisiana. Ill health caused her retirement four years later. Justice Johnson succeeded her on 1 February 2013.

⁶ The Court created the Civil Staff in 1997 as the counterpart to the Central Staff. Civil staffers draft reports in specialized cases that involve interlocutory or pre-trial civil writs, bar discipline matters, judicial disciplinary matters, and civil summary dockets. They also prepare bench memoranda for cases on direct appeal where a lower court has declared a law to be unconstitutional.

⁷ Pursuant to a Louisiana legislative act and a federal consent decree entered on 21 Aug. 1992, by the United States District Court for the Eastern District of Louisiana in *Chisom v. Edwards*, an arrangement was struck whereby Ortique was elected from New Orleans to the Court of Appeal, Fourth Circuit, for the purpose of serving on the Louisiana Supreme Court. (La. Acts 1992, no. 512) By order of the U. S. Supreme Court, Justice Ortique took his seat on 1 Jan. 1993. (970 F.2d 1408, C. A. 5 (La.) 1992)

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X. Last Words

In 1813 no one knew what the future held for the Supreme Court. For certain no one who attended the opening ceremonies that March morning could have imagined how from that day to this, the Court would stamp deep impressions upon Louisiana law and fashion itself into the linchpin of the judicial branch. At most, they likely expected an institution they did not understand completely to forge a workable legal system capable of satisfying their needs. By twists and turns, that hope translated into reality over the course of two centuries. And, in the words of Chief Justice Kimball, “[the] work of the Court to make our vision of an efficient, fair, and timely judiciary a reality . . .” continues.¹

¹ C. J. Catherine D. Kimball, “Message from the Chief Justice,” *Ann. Rep. Jud. Council Sup. Ct. La.* 1 (2011).

Appendices

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The Supreme Court of Louisiana

1 March 1813–present

Hall, Dominick A.	1813 (1 Mar.)–1813 (3 July) <i>Presiding Judge*</i>
Mathews, George	1813 (1 Mar.) –1813 (3 July) 1813 (4 Jul.)–1836 (14 Nov.) <i>Presiding Judge*</i>
Derbigny, Pierre	1813 (9 Mar.)–1820 (15 Dec.)
Martin, François Xavier	1815 (1 Feb.)–1836 (14 Nov.); 1836 (15 Nov.)–1846 (19 Mar.) <i>Presiding Judge*</i>
Porter, Alexander, Jr.	1821 (2 Jan.)–1833 (16 Dec.)
Bullard, Henry Adams	1834 (4 Feb.)–1839 (1 Feb.); 1840 (1 Jan.)–1846 (19 Mar.)
Carleton, Henry	1837 (1 Apr.)–1839 (1 Feb.)
Rost, Pierre Adolphe	1839 (4 Mar.)–1839 (30 June); 1846 (19 Mar.)–1853 (4 May)
Eustis, George	1839 (4 Mar.)–1839 (30 May); 1846 (19 Mar.)–1853 (4 May) <i>Chief Justice</i>
Strawbridge, George	1839 (3 Aug.)–1839 (1 Dec.)
Morphy, Alonzo	1839 (31 Aug.)–1846 (19 Mar.)
Simon, (Florent) Edouard	1840 (1 Jan.)–1846 (19 Mar.)
Garland, Rice	1840 (1 Jan.)–1846 (19 Mar.)
King, George Rogers	1846 (19 Mar.)–1850 (1 Mar.)
Slidell, Thomas	1846 (19 Mar.)–1853 (3 May); 1853 (4 May)–1855 (18 June) <i>Chief Justice</i>
Preston, Isaac T.	1850 (1 Mar.)–1852 (5 July)
Dunbar, William	1852 (1 Sept.)–1853 (4 May)
Voorhies, Cornelius	1853 (4 May)–1859 (27 Apr.)
Buchanan, Alexander M.	1853 (4 May)–1862 (6 May)
Ogden, Abner Nash	1853 (4 May)–1855 (30 June)
Campbell, James G.	1853 (4 May)–1854 (17 Oct.)
Spofford, Henry M.	1854 (6 Nov.)–1858 (1 Nov.)
Lea, James N.	1855 (23 July)–1857 (6 Apr.)
Merrick, Edwin T.	1855 (1 Aug.)–1865 (1 Apr.) <i>Chief Justice</i>
Cole, James L.	1857 (4 May)–1860 (12 Mar.)
Land, Thomas T.	1858 (1 Nov.)–1865 (1 Apr.)
Voorhies, Albert	1859 (3 May)–1865 (1 Apr.)
Duffel, Albert	1860 (12 Mar.)–1862 (1 Apr.)
Bonford, Peter	1863–1864
Manning, Thomas C.	1864–1865; 1877 (9 Jan.)–1880 (5 Apr.) <i>Chief Justice</i> ; 1882 (1 Dec.)–1886 (19 Apr.)
Hyman, William B.	1865 (1 Apr.)–1868 (1 Nov.) <i>Chief Justice</i>
Labauve, Zenon	1865 (1 Apr.)–1868 (1 Nov.)
Ilsley, John H.	1865 (1 Apr.)–1868 (1 Nov.)
Howell, Rufus K.	1865 (1 Apr.)–1877 (9 Jan.)

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Jones, Robert B.	1865 (1 Apr.)–1866 (1 July)
Taliaferro, James G.	1866 (1 July)–1876 (13 Oct.)
Ludeling, John T.	1868 (1 Nov.)–1877 (9 Jan.) <i>Chief Justice</i>
Wyly, William G.	1868 (1 Nov.)–1876 (3 Nov.)
Howe, William Wirt	1868 (1 Nov.)–1872 (3 Dec.)
Kennard, John H.	1872 (3 Dec.)–1873 (1 Feb.)
Morgan, Philip H.	1873 (1 Feb.)–1877 (9 Jan.)
Leonard, John E.	1876 (3 Nov.)–1877 (9 Jan.)
King, John Edward	1877 (9 Jan.)–1877 (9 Jan.)
Marr, Robert H.	1877 (9 Jan.)–1880 (5 Apr.)
DeBlanc, Alcibiades	1877 (9 Jan.)–1880 (5 Apr.)
Egan, William B.	1877 (9 Jan.)–1878 (30 Nov.)
Spencer, William B.	1877 (9 Jan.)–1880 (5 Apr.)
White, Edward Douglass	1879 (11 Jan.)–1880 (5 Apr.)
Bermudez, Edward	1880 (5 Apr.)–1892 (5 Apr.) <i>Chief Justice</i>
Poché, Felix P.	1880 (5 Apr.)–1890 (5 Apr.)
Todd, Robert B.	1880 (5 Apr.)–1888 (11 June)
Levy, William M.	1880 (5 Apr.)–1882 (10 Aug.)
Fenner, Charles E.	1880 (5 Apr.)–1893 (1 Sept.)
Watkins, Lynn B.	1886 (19 Apr.)–1901 (2 Mar.)
McEnery, Samuel D.	1888 (11 June)–1897 (4 Mar.)
Breaux, Joseph A.	1890 (5 Apr.)–1904 (4 Apr.); 1904 (5 Apr.)–1914 (5 Apr.) <i>Chief Justice</i>
Nicholls, Francis T.	1892 (5 Apr.)–1904 (4 Apr.) <i>Chief Justice</i> ; 1904 (5 Apr.)–1911 (18 Mar.)
Parlange, Charles	1893 (1 Sept.)–1894 (1 Jan.)
Miller, Henry Carleton	1894 (1 Feb.)–1899 (4 Mar.)
Blanchard, Newton C.	1897 (4 Mar.)–1903 (17 Oct.)
Monroe, Frank Adair	1899 (22 Mar.)–1914 (4 Apr.); 1914 (5 Apr.)–1922 (2 Jan.) <i>Chief Justice</i>
Provosty, Olivier O.	1901 (16 Mar.)–1922 (1 Jan.); 1922 (2 Jan.)–1922 (30 Dec.) <i>Chief Justice</i>
Land, Alfred D.	1903 (17 Oct.)–1917 (4 June)
Sommerville, Walter B.	1911 (18 Mar.)–1921 (13 Oct.)
O’Niell, Charles A.	1914 (6 Apr.)–1922 (30 Dec.); 1922 (31 Dec.)–1949 (7 Sept.) <i>Chief Justice</i>
Dawkins, Ben C.	1918 (10 Dec.)–1924 (17 May)
Overton, Winston	1921 (5 Jul.)–1934 (9 Sept.)
Land, John R.	1921 (13 Oct.)–1941 (18 Apr.)
Baker, Joshua G.	1921 (15 Oct.)–1922 (27 Nov.)
St. Paul, John	1922 (2 Jan.)–1934 (30 Apr.)
Rogers, Wynne G.	1922 (27 Nov.)–1946 (15 Sept.)
Thompson, David N.	1922 (5 Dec.)–1930 (1 Dec.)
Reid, Robert R.	1923 (2 Jan.)–1923 (14 Jan.)

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Brunot, Harney F.	1923 (4 June)–1936 (31 Dec.)
Odom, Frederick M.	1931 (1 Jan.)–1944 (20 Dec.)
Higgins, Archibald T.	1934 (19 Sept.)–1945 (3 Oct.)
Fournet, John B.	1935 (2 Jan.)–1949 (6 Sept.); 1949 (7 Sept.)–1970 (31 July) <i>Chief Justice</i>
Ponder, Amos L., Jr.	1937 (4 Jan.)–1959 (19 Oct.)
McCaleb, E. Howard	1941 (23 May)–1943 (1 Jan.); 1947 (1 Jan.)–1970 (31 Dec.); 1971 (1 Jan.)–1972 (22 Dec.) <i>Chief Justice</i>
Hamiter, Joe B.	1943 (1 Jan.)–1970 (30 Jul.); 1970 (1 Aug.)–1970 (30 Dec.) <i>Chief Justice</i>
Hawthorne, Frank W.	1945 (1 Jan.)–1968 (2 Jan.)
Kennon, Robert F.	1945 (15 Oct.)–1946 (31 Dec.)
Bond, Nat W.	1947 (2 June)–1948 (18 Feb.)
Moise, Harold A.	1948 (10 May)–1958 (26 Sept.)
Frugé, J. Cleveland (Ad Hoc)	1949 (8 Sept.)–1949 (12 Dec.)
LeBlanc, Sam A.	1949 (12 Dec.)–1954 (31 Dec.)
Simon, James D.	1955 (1 Jan.)–1960 (23 Aug.)
Hamlin, Walter B.	1958 (15 Dec.)–1972 (26 Dec.); 1972 (26 Dec.)–1973 (13 Mar.) <i>Chief Justice</i>
Sanders, Joe W.	1960 (7 Nov.)–1973 (13 Mar.); 1973 (14 Mar.)–1978 (31 Dec.) <i>Chief Justice</i>
Summers, Frank	1960 (12 Dec.)–1978 (31 Dec.); 1979 (1 Jan.)–1980 (29 Feb.) <i>Chief Justice</i>
Barham, Mack E.	1968 (12 Feb.)–1975 (15 Sept.)
Tate, Albert, Jr.	1970 (1 Aug.)–1979 (3 Nov.)
Dixon, John A., Jr.	1971 (4 Jan.)–1980 (29 Feb.); 1980 (1 Mar.)–1990 (8 April) <i>Chief Justice</i>
Calogero, Pascal, Jr.	1973 (10 Jan.)–1990 (8 April); 1990 (9 April)–2008 (31 Dec.) <i>Chief Justice</i>
Marcus, Walter F., Jr.	1973 (14 Mar.)–2000 (1 Sept.)
Dennis, James L.	1975 (3 Dec.)–1995 (2 Oct.)
Blanche, Fred A., Jr.	1979 (1 Jan.)–1986 (16 May)
Watson, Jack C.	1979 (19 Nov.)–1996 (31 Dec.)
Lemmon, Harry T.	1980 (16 May)–2001 (16 May)
Cole, Luther F.	1986 (19 May)–1992 (31 Dec.)
Hall, Pike, Jr.	1990 (15 Aug.)–1994 (31 Dec.)
Kimball, Catherine D.	1992 (31 Dec.)–2008 (31 Dec.) 2009 (1 Jan.)–2013 (31 Jan.) <i>Chief Justice</i>
Ortique, Revius O., Jr.	1993 (1 Jan.)–1994 (14 June)
Johnson, Bernette J.	1994 (31 Oct.)–2013 (31 Jan.) 2013 (1 Feb.) –present <i>Chief Justice</i>
Victory, Jeffrey P.	1995 (1 Jan.)–present
Bleich, E. Joseph	1996 (3 May)–1996 (31 Dec.)
Knoll, Jeannette Theriot	1997 (1 Jan.)–present

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Traylor, Chet D.	1997 (1 Jan.)–2009 (31 May)
Weimer, John L.	2001 (17 Dec.)–present
Guidry, Greg	2009 (1 Jan.)–present
Clark, Marcus R.	2009 (19 Nov.)–present
Hughes, Jefferson D. III	2013 (1 Feb.)–present

*Prior to 1845 La. Constitution, Art. 62, Louisiana Supreme Court chief justices were known as “presiding judges” and associate justices were called “judges.”

LOUISIANA SUPREME COURT BICENTENNIAL

Clerks of the Supreme Court of Louisiana, 1813–present

Clerks in the Eastern Supreme Court District

New Orleans was and continues to be the only domicile of the Eastern Supreme Court District.

At New Orleans 1813–present

Reuben L. Hamilton	1813–1814
Charles Derbigny	1814–1820
N. N. LeBreton	1820–1837
A. Cuvillier	1837–1843
Charles Durocher	1843–1845
Eugene Lasere	1845–1865
J. Madison Wells, Jr.	1865–1872
John M. Howell	1872–1877
Alfred M. Roman	1877–1880
George W. Dupré	1880–1889
Joseph F. Poché	1889–1891
Thomas McCaleb Hyman	1891–1909
Paul E. Mortimer	1909–1935
John R. Land, Jr.	1935–1939
Louis P. Niklaus	1939–1955
Valsin J. Courville	1955–1969
Harold A. Moise, Jr.	1969–1978
Frans J. Labranche, Jr.	1978–1996
John Tarlton Olivier	1996–present

Clerks in the Western Supreme Court District

The Western Supreme Court District included Alexandria, Baton Rouge, Monroe, Natchitoches, Opelousas and Shreveport, but the Court has met only at New Orleans since 1894 (La. Acts 1894, no. 69). Most of the records of the Alexandria, Monroe, and Opelousas sittings are now lost. Consequently, it is impossible to identify all of the Western District clerks or to fix the terms of service with precision for known clerks.

At Alexandria 1817-1864

William Wilson	1813–1818
Stephen Cuny	1818-1843
Alphonse Lastrappes	1844-1846
M. A. Airail	1846–1850
Duncan C. Goodwin	1850–18**

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**Judicial Administrators of the Supreme Court of Louisiana,
1954–present**

George W. Pugh	1954–1956
Donald J. Pate	1956–1958
Richard F. Knight	1958–1960
C. Jerre Lloyd	1960–1963
Jerry W. Millican	1963–1964 (1 Oct.)
Robert E. LeCorgne, Jr.	1964–1971
Eugene M. Murret	1971–1987
Hugh M. Collins	1988–2010
Timothy F. Averill	2011–present

Directors of the Law Library, 1946–present*

Selma Villarubbia**	1946–1953
Madge K. Tomeny	1953–1972
Harriet Lemann	1972–1981
Carol D. Billings	1981–2007
Georgia Chadwick	2007–present

*The Law Library of Louisiana went through several name changes and locations from 1838-1945. In 1946, it officially became the Law Library of Louisiana, which is why we have only included its directors from 1946 to the present.

**Villarubbia's term actually began when the library was called the State Library of Louisiana in 1944.

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Acknowledgements

Thanks go to Justice Greg G. Guidry for urging me to write this sketch and to library director Georgia Chadwick for her encouragement as well. I acknowledge the assistance of Mrs. Chadwick's colleagues. Miriam D. Childs and Tara C. Lombardi deserve special recognition. At every stage they unstintingly helped to move the manuscript along and spared me the embarrassment of mistakes. They also drew up the preliminary drafts of the appendices, which we perfected into the versions that appear in this volume. Thanks too to Daphne Tassin and graduate student Sarah Waits who filled an enormous quantity of my requests for electronic copies of documents cheerfully and expeditiously. Marie Erickson did a number of helpful Westlaw searches. Katherine B. Nachod and law student Emily Wojna verified citations for accuracy and consistent copy style. Sybil A. Boudreaux and Florence M. Jumonville, librarians at the Department of Louisiana and Special Collections at the University of New Orleans, assisted in making available the minute books and other records housed in the Supreme Court archives. Professor Mark F. Fernandez cast his sharp eye over the manuscript and made useful suggestions that materially improved the finished work. He also furnished some quite helpful advice on ways to arrange the volume at an early stage of its gestation. For their careful reading and thoughtful commentary, Carol D. Billings and Raphael Cassimere, Jr., deserve thanks as well.

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About the Author

Warren M. Billings graduated A. B. from the College of William and Mary, A. M. from the University of Pittsburgh, and Ph. D. from Northern Illinois University. He is Distinguished Professor of History, Emeritus, at the University of New Orleans and formerly Historian of the Supreme Court of Louisiana and Visiting Williams Professor of Law at the University of Richmond Law School. Currently he is Visiting Professor of Law at the College of William and Mary Law School. Professor Billings turned out over sixty graduate students, a number of whom gained doctorates and renown as scholars in their own right. Several of his William and Mary law students are prize-winning essayists. An historian of law in Louisiana and colonial Virginia, Dr. Billings is the author or editor of seventeen books and over one hundred articles, reviews, and book chapters, and he has also given as many presentations at professional conferences and public lecture series. He chaired the APVA/Preservation Jamestown Rediscovery Archaeological Advisory Board and held a seat on the federal Jamestown 400th Commemoration Commission. A one-time member of the boards of the Louisiana State Museum, the Louisiana Endowment for the Humanities, the Tennessee Williams/New Orleans Literary Festival, and numerous other boards or commissions. A past president of the Louisiana Historical Association, he is a former and sitting trustee of APVA/Preservation Virginia. His professional memberships include the American Association of Law Libraries, the British and Irish Association of Law Librarians, the Omohundro Institute of Early American History and Culture, the Southern Historical Association, the Virginia Historical Society, and the Louisiana Historical Association. A one-time Fellow of the American Bar Foundation and a Virginia Historical Society Mellon Research Fellow, he holds honorary life membership in the British and Irish Association of Law Librarians and the Company of Fellows of the Louisiana Historical Association. The Louisiana Historical Association honored him with its Garnie W. McGinty Lifetime Achievement Award and the Virginia Historical Society conferred its Richard Slattern Award for Excellence in Virginia Biography. By order of the Court, he was designated Bicentennial Court Historian on 1 March 2013. Dr. Billings is married to Carol D. Billings, sometime Director of the Law Library of Louisiana. Their daughter, son-in-law and two grandchildren reside in New Orleans.

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