

CASA QUARTERLY

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Summer Edition of the CASA Quarterly

By Janice Irving
Central Staff Director
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Welcome to the summer edition of the CASA Quarterly, a transition from the 2011 Summit with a look ahead to the 2012 conference. In this issue, you will get to know a little bit about CASA's ABA liaison, Christie Breitner. We also have our final recap of the Washington, D.C. Summit by Michael G. Wilson of the U.S. Court of Appeals for the Sixth Circuit in Cincinnati. Elena Ris writes about the experience of kidney donation in an incredibly compassionate story from Atlanta. Greg Lercher continues his study of how funding and budget

crises affect the legal system by discussing the experiences of Florida courts with budget shortfalls. Then it's on to Louisiana! Take our legal road trip and discover the location of some of those famous cases you recall from law school days and other famous landmarks of the legal system; then review a scholarly recap of what makes Louisiana's legal system unique. (You may want to remember that regardless of pronunciation elsewhere, in south Louisiana, pretty much any surname that ends in eau, eaux, eaud, aux, aud or ot is pronounced "oh," so you may want to consider that your default pronunciation. My favorite is the name "Gouaux," pronounced – "Go.")

Message from the Chair

By Susan Dautel
New York State Court of Appeals
Albany, NY

New Orleans, here we come! November seems a long way off as we all deal with an unusually steamy summer, but people have been hard at work for months planning for the 2012 Appellate Judges Education Institute (AJEI) Summit which will take place November 15-18. The program of events is in the final polishing stage, with great speakers, interesting topics and fun social events lined up. There will be a plenary ses-

sion "Conversation," followed by a reception, with U.S. Supreme Court Justice Antonin Scalia. Always popular Dean Erwin Chemerinsky will present his Supreme Court reviews, which will likely dovetail in an interesting way with the opening session presented by members of the media: "The Presidential Election's Impact on the Courts." The national election will have taken place in the week preceding the Summit. CASA members have been helping to line up presenters for sessions on technology, ethics, jurisdictional issues in child custody/abduction cases, and for the final

plenary session, "Debating the Patriot Act - A Decade Later." For the latter session, a CASA favorite, Susan Herman (Brooklyn Law School professor and president of the American Civil Liberties Union) will have a lively point-counterpoint discussion with Steven Bradbury, head of the Office of Legal Counsel in the U.S. Department of Justice during the administration of President George W. Bush. Another CASA favorite, Linda Elrod, professor at Washburn Law School, will address the interjurisdictional handling of child custody cases with Tulane Law School pro-

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fessor Jeanne Carriere. Of topical interest for the venue are sessions on "Post-Disaster Issues: Lessons Learned from Katrina and BP Oil Spill" and "Emerging Issues in Energy Litigation." CASA member Ric Schickele will join a panel on "The Art of Disagreement and Dissent - Collegiality." From issues related to religion, access to justice, torts, mental health, and more, each day will present an array of stimulating sessions to attend.

In addition to the surrounding delights of New Orleans itself, it will be a fun succession of Summit social events. Each evening CASA will host a hospitality suite – a great place for a drop-in visit after dinner to have a glass of wine and meet and greet your fellow CASA members. Thursday night will be a reception at the Louisiana Supreme Court, hosted by members of the Court and CASA member and Clerk of Court John Olivier. The Justice Scalia reception is Friday night at the Hotel Monteleone. At both of these receptions there will be local jazz musicians performing. Friday night is also the CASA dinner and T-shirt

exchange at Deanie's Seafood Restaurant, a short walk from the Summit hotel within the French Quarter. Just prior to dining, we'll have our historic mixer/ice-breaker T-shirt exchange. It's not too early to be picking out the exciting T-shirt (size L) from your region to bring along for display and exchange that night! There will be prizes for the people who bring the #1 and #2 most coveted shirts. Saturday night is the AJEI Annual Dinner, for which the entertainment is always a hit, followed by a fun "Just Desserts" reception. Sounds like a whirlwind of good food, good jazz and good company – perfect for a visit to N'awlins!

John Olivier has also been busy setting up a CASA career panel for both Tulane and Loyola law students, which may take place at the Louisiana Supreme Court. For some years, CASA members have done presentations at law schools in Summit venues to give law students information about careers in public service at federal and state appellate courts. The panels are fun to present, with short descriptions of career path by each panel

member, and interesting questions from the students. The New Orleans session will take place on the morning of Thursday, November 15, so panel members need to commit to an early arrival for the Summit. If you are interested in participating on such a panel, let me know at sdautel@courts.state.ny.us.

Please be on the lookout for Summit registration announcements and scholarship opportunities. In the past, scholarships have been awarded on a rolling basis, so early application is important.

One last item: last year I set up a group ABA membership for my Court. It was an easy process and both judges and staff attorneys were interested to join the ABA in this manner. It may still be possible for your court to take advantage of this attractive membership opportunity. If you are interested and would like information about the process, feel free to contact me at the email address above or the ABA Group Membership specialists at abagroup@americanbar.org.

Hope to see you in New Orleans!

Call for CASA Executive Board Nominations

CASA is seeking the names of persons interested in serving on its Executive Board, either as an officer or member-at-large. The term of each officer is one year; members-at-large typically serve for two years, and then move into officer positions. Open positions for the 2012-2013 term are Chair-Elect, Secretary and members-at-large.

Board members attend a planning meeting in February during the ABA Midyear Meeting (travel and accommodations subsidized by the ABA) and attend the CASA business/elections meeting as part of their attendance at the November AJEI Summit. The 2013 ABA Midyear Meeting is in Dallas, Texas. The 2013 Summit is in San Diego, California. Other CASA Board business is conducted, as needed, by email or conference call.

Service on the Executive Board is a way to get further involved in CASA and its education and communication missions. It is the best way to meet colleagues in similar professional positions around the country. Sometimes it is just plain fun and the beginning of many lasting friendships.

If you are interested in a Board position, please send an email to Chair Susan Dautel at sdautel@courts.state.ny.us.

She will pass your name to the Nominations Committee headed by past chair Naomi Godfrey. Election of officers and members-at-large will take place at the CASA business meeting on Saturday, November 17, 2012 at the Summit in New Orleans.

Meet Christie Breitner!



Christie Breitner
ABA Judicial Division
Conference Manager

I am the ABA Judicial Division Conference Manager, overseeing the administrative support staff that provides services to the Judicial Division and its six Conferences. I provide the direct staff support for the Appellate Judges Conference, Council of Appellate Lawyers, and Council of Appellate Staff Attorneys.

I have been with the ABA since March 2011. After seven years working for the chambers of commerce on Chicago's north side, the ABA has been a natural fit. I like to say that I just traded small business owners for judges and attorneys. All those years working in very small organizations obliged me to develop a solid working knowledge of all facets of association administration – from member services, to marketing, to HR, to financial management, to taking out the recycling! This generalist approach

served me well as I settled in to life at the ABA. The substance of the work is different, but the needs are the same.

Nonprofit management has not always been my focus. Before obtaining my Masters in Public Service Management at DePaul University (and a degree in Linguistics prior to that), my first career was in the food and beverage industry, where I spent 15 years managing restaurants, tending bar, waiting tables, catering, and selling specialty foods. I still feed my passion for great food and hospitality by volunteering at foodie events, and checking out new restaurants in Chicago. My favorite right now? [The Purple Pig](#). I also travel as much as possible, with itineraries always built around great dining experiences.

Chicago has been my adopted habitat for the past nine years, but I originally grew up in Ann Arbor, MI. I miss football weekends in Ann Arbor (Go Blue!), but love my adopted city (Go Bears!).

Never one to be bored, I have more hob-

bies than I have time for – at any given time you might find me in an art class at Lillstreet, sailing with 3rd Coast Cruising, or dancing at the Old Town School of Folk Music, among many other interests. I am also in the gym at least three times a week trying to stay a few steps ahead of those fast approaching 40's. My pitbull-mix Cheli is my devoted companion, and I am blessed with a fun group of close friends and family.

What I like best about my work is interacting with diverse groups and coordinating a wide variety of projects. My number one goal is connecting people to resources that enhance their lives, organizations, and experiences. Feel free to contact me any time for assistance with your CASA volunteer activities: Christie.Breitner@americanbar.org, 312-988-5450.

Looking Back at the 2011 AJEI Summit

By Michael G. Wilson
U.S. Court of Appeals for the Sixth Circuit
Cincinnati, Ohio

The 2011 Summit in Washington, D.C. marked only the second time I have been in attendance. My first outing, the 2008 Summit held in Phoenix, Arizona, could not have been more successful from my perspective, as I met some wonderful individuals from both the public and private sectors who understood, and had a passion for, the appellate process. The CLE offerings proved informative and applicable to my seemingly narrow niche of federal habeas cases with a smattering of federal direct criminal appeals mixed

in for good measure. Further, the program agenda's incorporation of the opportunity to get a glimpse of the area's natural and cultural offerings demonstrated that the experience could be fun as well.

The 2011 Summit certainly met my expectations, as "A Conversation with Justice Sotomayor" opened the program agenda. As in 2008 listening to Justice Sandra Day O'Connor speak, I felt privileged to be in the audience and appreciated the time that Justice Sotomayor took to address the Summit. The wildcard of the week for me was Scott Turow, who I first noticed when he served as a member of the Illinois Com-

mission on Capital Punishment. While I was aware of Mr. Turow's accomplishments as a lawyer from afar, I learned in person that he embodies a rare versatility of talents and abilities that make me proud to be a part of the profession. In honor of Veterans Day, I was moved by the words of the Honorable James E. Baker, U.S. Court of Appeals for the Armed Services, who spoke at the annual dinner. Judge Baker reminded us that the impact of those who have served this country as part of the military is not limited solely to service in battle. In many instances, those who have served in the military have also served as judges and advocates endeavoring to protect this

country and its fundamental principles by yet another avenue, our court system.

The remainder of the program agenda provided excellent opportunities to learn of new trends and concerns in many legal areas. I was eager to hear how many ways there are to develop an ap-

pellate practice – all take a great deal of time and effort, as with anything worthwhile! Also, this Summit discussed the influx of technology that will present some challenges in the near future, if not already, and it will be interesting to see how each jurisdiction moves forward with various solutions. All in all, it was

a worthwhile adventure and I look forward to New Orleans in 2012.

The Gift of Life to a Fellow Court Employee

By Elena Ris and Ed Scholl

United States Court of Appeals for the Eleventh Circuit
Atlanta, Georgia

We came from different backgrounds. I was born in Cuba and emigrated to the United States at five years of age and did not speak a word of English. I attended the University of Florida for my undergraduate and law degrees. Edward Scholl was born in a small town in upstate New York and received his undergraduate degree from Union College in Schenectady, N.Y. and then received a Ph.D. in political science from Emory University.

We first met in 1992 when I began working as a staff attorney and Ed was an analyst in the clerk's office at the U.S. Court of Appeals, Eleventh Circuit. At the court's holiday party in December 2010, I

learned from Ed that his kidneys had failed in October and he was undergoing peritoneal dialysis at home for nine hours a night. He looked extremely pale and tired and my heart went out to him. Ed said that he was looking for a living kidney donor and that no members of his family would be able to donate a kidney. Most kidney donors are relatives or spouses. His only other option would be

placement on the kidney transplant list and waiting for two to three years for a kidney to become available from a deceased donor. (For individuals with a rare blood type the wait time is even longer. As of June 1, 2012, there are 98,885 individuals on the kidney transplant waiting list.) A living donor is also the optimum transplant scenario. A kidney from a living donor lasts for a median time of 20 years while a kidney from a deceased donor lasts for a median time of only 13 years.

Without a second thought, I told Ed that if we were compatible, I would donate a kidney to him. He gave me the phone

number for the living donor coordinator at Emory University and we began the process of typing and cross matching blood samples. In February 2011, I was notified that Ed and I were compatible. This, however, was only the beginning. Ed and I had to go through a battery

of tests to determine whether we were both healthy enough for the surgery. One beneficial result of the exhaustive tests was the discovery of a heart condition that I did not know that I had. This condition, however, did not disqualify me from donating. Finally, we received medical approval for the transplant and the operations took place on October

18, 2011, at Emory University Hospital in Atlanta, Georgia, which was a sort of a homecoming for Ed.



My left kidney was removed laparoscopically, sent to a second operating room, and transplanted into Ed's abdomen. The kidney started working right away and later that day the surgeons told me that it was an "exceptional" kidney. Ed and I recovered together on the Emory University Hospital transplant unit floor and we were able to talk and visit the next day. The transplant occurred on a Tuesday and Ed and I both went home on Friday.

My recovery was essentially uneventful. As I am a federal government employee, I was entitled to 240 hours of "organ donor leave" and did not have to use either my annual or sick leave during my recovery period. All of my hospital bills



and medical exams pre- and post-surgery were covered by Ed's insurance company. I have absolutely no regrets donating my kidney to a friend. I was humbled by the opportunity to help someone regain their quality of life. Ed is doing great and his doctors say that his lab results are perfect. It's wonderful to see him active and energetic, and his paleness is gone. All of our fellow employees comment about how good he looks. He

has thanked me numerous times for giving him his freedom and his life back. I still don't think it was a really big deal. The whole experience has been very fulfilling and I highly encourage all of you to consider being a living organ donor to a relative or friend in need. More information on being a living donor can be found at www.donatelife.net.



Budget Shortfalls in the Sunshine State Reduce Floridians' Access to Justice

By Greg Lercher
2011-2012 ABA Law Student Liaison to
the Judicial Division
Stetson University College of Law

The Florida judiciary is primarily state funded, and according to the American Bar Association, Florida allocates just 0.7% of its state budget to its courts. This amount is less than its neighbors, with Arkansas allocating 3.5% of its state budget to its courts, Kentucky with 3.5%, and Georgia with 0.9%. (1) As a result, Floridians paid \$1 billion in court fees, fines, and other court costs in 2011. However, Florida courts and clerks received only 65% of these funds, with the remainder going to Florida's general revenue fund and other governmental entities.(2) In other words, Florida's courts are generating revenue for the state while the court system faces a huge budget shortfall.

The situation has become so severe that Florida Supreme Court Chief Justice Charles Canady has written a letter to Florida Governor Rick Scott that points out a projected \$108 million budget shortfall and requests help from Tallahassee.(3) In 2009, Florida lawmakers changed the funding mechanism for courts by creating a trust fund that was heavily funded by fees coming in from

the huge number of new foreclosure cases. However, when the bank robo-signing scandal arose, a moratorium was placed on new foreclosure cases and as a result, the current shortfall was created. (The robo-signing scandal involved banks systematically signing off on foreclosures without properly reviewing the specifics of the cases.)(4) In 2010, the court system put into place an emergency budget and hiring freeze and narrowly avoided having to implement widespread furloughs. Governor Scott pledged to make steady court funding a priority but also stressed that courts "must operate in light of the fact that we are living through very difficult economic times"(5) and reiterated a pledge not to sign a tax increase.(6)

According to an NPR report, Governor Scott agreed to make funds available to carry the courts through April, but he said he wanted to study the issue before making a decision on additional funding. According to the report, Scott indicates he can save the courts more money by implementing his current proposal of "cutting some \$40 million - nearly 10 percent - from the judiciary in the upcoming budget. It is a plan that would cut some 600 positions from court personnel, including many judges' assistants."(7) Chief Judge Joel Brown of the

11th Circuit says the proposed cuts raise a basic question about the intent of the governor and the legislature. "It's a question of willingness, frankly, to fund an independent third branch of government - fully," said Judge Brown.(8)

While the courts' budget shortfalls affect all Floridians, the impact is especially pronounced among those most in need of access to the courts. According to a Miami Herald editorial, "Florida is just one of four states that currently has zero state funding to help low-income people pay lawyers to dodge foreclosure and eviction or secure unemployment or disability benefits."(9) Unlike other states, Florida does not allocate money from filing fees or the state budget for such programs. Florida's Legal Aid community still relies on a funding scheme established in 1981 derived from interest-bearing trust accounts. Lawyers set aside their clients' money in these escrow accounts for short periods of time where interest is generated. Unfortunately, record low interest rates in recent years have created an unsustainable situation. Some 120 of Florida's 410 Legal Aid attorneys are expected to lose their jobs. The Legal Aid Service of Broward will cut 20 positions. The 100,000 cases a year that the Florida Bar Foundation funds will drop by at least a third.

According to the Miami Herald editorial, the timing for such a funding disaster could not be worse – with more and more Florida families facing foreclosure and one in six Floridians living in poverty.(10) Florida’s constitution guarantees a person’s right of access to the courts in order to protect his or her rights and liberties. As a result of the funding situation, those without access to legal services are effectively denied the protection of the law.(11)

- (1) <http://jacksonville.com/opinion/editorials/2012-02-15/story/judicial-system-needs-reliable-funding>
- (2) [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/9321DBF5EA90156085257959005D2C4E/\\$FILE/Recommendations%20of%20Revenue%20Stabilization%20Workgroup,%20November%202011.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/9321DBF5EA90156085257959005D2C4E/$FILE/Recommendations%20of%20Revenue%20Stabilization%20Workgroup,%20November%202011.pdf?OpenElement)
- (3) <http://www.winknews.com/Local-Florida/2011-09-29/State-court-system-faces-108M-budget-shortfall>
- (4) <http://www.treasury.gov/about/organizational-structure/ig/Recent%20Audit%20Reports%20and%20Testimonies/OIG12054.pdf>
- (5) http://www.wctv.tv/home/headlines/Scott_Ill_Make_Court_Funding_a_Priority_127286023.html
- (6) http://www.wctv.tv/home/headlines/Scott_Ill_Make_Court_Funding_a_Priority_127286023.html
- (7) <http://www.npr.org/2011/04/05/135135532/florida-court-system-faces-funding-crisis>
- (8) <http://www.npr.org/2011/04/05/135135532/florida-court-system-faces-funding-crisis>
- (9) <http://www.miamiherald.com/2012/02/20/2651907/access-to-the-courts.html>
- (10) [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/9321DBF5EA90156085257959005D2C4E/\\$FILE/Recommendations%20of%20Revenue%20Stabilization%20Workgroup,%20November%202011.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/9321DBF5EA90156085257959005D2C4E/$FILE/Recommendations%20of%20Revenue%20Stabilization%20Workgroup,%20November%202011.pdf?OpenElement)
- (11) <http://www.miamiherald.com/2012/02/20/2651907/access-to-the-courts.html>

Legal Road Trip to New Orleans, Louisiana

By Georgia Chadwick
Director
Law Library of Louisiana
New Orleans, LA

1. Louisiana Supreme Court Building and Museum
400 Royal St.

The Louisiana Supreme Court building was the location of the Court from 1910-1958. For many years the building sat vacant but after extensive renovations, the Court returned to the building in 2004. The building, designed in the Beaux Arts style, also houses the Law Library of Louisiana, the Louisiana 4th Circuit Court of Appeals, the Judicial Administrator’s office, and the Louisiana Supreme Court Museum. On the building’s front steps is a statue honoring Edward Douglass White, the only U.S. Supreme Court Justice from Louisiana. Historical portraits of Louisiana judges and important legal figures are displayed throughout the building, and the Louisiana Supreme Court Museum displays portraits of Chief Justices since 1813, plus a timeline of Louisiana law and various exhibits.

2. Press Street Railroad Yards

Press and Royal Streets

In 1892, Homer Plessy (1863-1925), a New Orleans shoemaker, purchased a ticket to board a whites-only railroad car at the East Louisiana Railroad Depot. Plessy was asked by the conductor if he was “colored,” and when Plessy replied affirmatively he was arrested. His arrest allowed the Comité des Citoyens to file a lawsuit challenging Louisiana’s Separate Car Law. The lawsuit, *Plessy v. Ferguson*, went to the U.S. Supreme Court, which ruled in favor of Louisiana’s separate but equal doctrine. The corner where Plessy was arrested is designated by a plaque commemorating his courageous act. [We as Freeman: Plessy v. Ferguson](#) by Keith Weldon Medley, details the events surrounding this historic decision.

3. St. Louis Cemetery No. 1
501 Basin St.

St. Louis Cemetery No. 1, the oldest cemetery in New Orleans, opened in 1789. Notable legal figures buried there include Louis Moreau-Lislet, prominent Louisiana legal scholar and author of the *Digest of 1808*; Ernest N. “Dutch” Morial, first African-American mayor of

New Orleans (1978-1986) and first African-American graduate of LSU Law School; Pierre Derbigny, Louisiana Supreme Court justice 1813-1820; Homer Plessy; and Myra Clark Gaines, plaintiff in the New Orleans-based Gaines case, which was the longest-running civil suit in U. S. history. St. Louis No. 1 is a walkable cemetery featuring above-ground vaults. A formal tour of the cemetery is recommended. The cemetery is on the National Register of Historic Places.

4. John Minor Wisdom Courthouse
600 Camp St.

The Wisdom Courthouse is the location of the U.S. 5th Circuit Court of Appeals. Completed in 1915, the building is an example of the Italian Renaissance Revival style, and has been placed on the National Register of Historic Places. Major features of the building’s exterior are the colossal statues at each rooftop corner, called the “Ladies.” John Minor Wisdom (1905-1999) was a 5th Circuit judge who wrote landmark decisions upholding school desegregation and voter rights. The Wisdom Collection at Tulane Law Library (6329 Freret St.) contains his judicial papers, his personal

library, and the awards bestowed upon Judge Wisdom during his distinguished career. [Champion of Civil Rights: Judge John Minor Wisdom](#), by Joel Friedman, is a recent biography of the judge that fully explores his legacy.

5. A. P. Tureaud Civil Rights Memorial Park
St. Bernard and A. P. Tureaud Avenues

Alexander Pierre Tureaud (1899-1972) was an outstanding civil rights attorney for the NAACP in New Orleans. He received his law degree from Howard University. Tureaud took on cases in the areas of education, equal pay, and equal access. He also championed African American voter registration. Tureaud formed the Martinet Society in

1957, consisting of New Orleans civil rights attorneys who made use of his extensive law library and his expertise. The centerpiece of the park is the Sheleen P. Jones bronze statue of A. P. Tureaud.

6. The Cabildo and the Presbytère
751 Chartres St. (Jackson Square, the French Quarter)

The Cabildo and the Presbytère are historical locations of the Louisiana Supreme Court. The Supreme Court sat in the Presbytère through the 1840s, and afterward the Court sat in the Sala Capitular of the Cabildo. While in the Cabildo, the Supreme Court heard the Myra Clark Gaines case, which is the longest-running civil suit in United States history, as well as *Plessy v. Fergu-*

son. The Cabildo was the seat of municipal government when Louisiana was a Spanish colony. The Louisiana State Museum is the current occupant of the



Law Library of Louisiana Director Georgia Chadwick gives visiting law students from Russia a tour of the Spanish legal materials in the Rare Book Room.

Cabildo and the Presbytère. Both structures are National Historic Landmarks.

The Louisiana Civil Code and the Code Civil – An Introduction

By Miriam Childs
Head of Technical Services
Law Library of Louisiana
Louisiana Supreme Court
New Orleans, LA

Civil law began in Louisiana in 1712, when Louis XIV granted a Charter to Antoine Crozat to develop and administer the lands claimed by France that had been discovered by Sieur de la Salle in 1682. The Charter stated that the Louisiana territory was to be governed by Edicts, Ordinances, and the Custom of Paris. A Superior Council with executive and judicial powers was created to execute the law. French rule in Louisiana remained in place until 1769, when Spain took possession of the colony. The Spanish established the Cabildo, which was composed of executive judicial officers called *alcaldes*. In 1800, in accordance with the Treaty of San Ildefonso, Spain ceded Louisiana to France. France sold Louisiana to the United States, and

the transfer, called the Louisiana Purchase, took place on December 20, 1803. In the short time France had possession of the colony prior to the transfer, the colonial prefect, Pierre Laussat, abolished the Cabildo but didn't establish any courts in its place. As a result, cases before the Cabildo were held in abeyance until territorial courts could be established under American governance.

William C. C. Claiborne was appointed by President Jefferson as one of the commissioners to take possession of the Louisiana territory in 1803. President Jefferson vested Claiborne with all powers, including judicial, exercised by the Governor-General and the Intendant under Spanish rule. A Congressional act in October 1803 extending the United States Constitution as the law of the territory also left the existing Spanish colonial laws of Louisiana unchanged, giving new officials the power to administer them. The need for a judicial body im-

mediately after the transfer was urgent. Governor Claiborne established the Court of Common Pleas, consisting of seven judges, to replace the Cabildo. This Court had limited civil and criminal jurisdiction. Claiborne retained original jurisdiction in serious cases and appellate jurisdiction over the Court of Pleas.

A condition of the territory's admittance into the Union was the formation of a system of government and a legal system. This requirement included the determination of which laws were in effect in the territory. Determining which Spanish laws were in effect was neither simple nor straightforward. Since Spanish law volumes were scarce and obscure, Americans in the territory thought it would be simplest to switch to the common law tradition. Governor Claiborne believed that retaining existing Spanish colonial laws would be a temporary measure until the common law could be established in the territory.

However, the native population was hesitant to embrace an unfamiliar system of law.

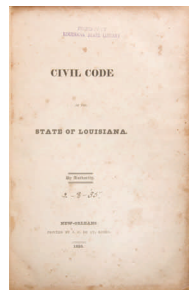
In 1806, the Legislative Council attempted to pass an act declaring that Roman and Spanish laws were in effect. Governor Claiborne vetoed the bill. The Legislature reconvened a few days later, after dissolving itself in protest. A legislative resolution in June of 1806 appointed Louis Moreau-Lislet and James Brown as the attorneys who were “to compile and prepare jointly a civil code for the use of this Territory,” and further “that the two juriconsults shall make the civil law by which this Territory is now governed the ground work of said code.” Governor Claiborne accepted the bill. Brown and Moreau-Lislet’s work became known as *A Digest of the Civil Laws Now in Force in the Territory of Orleans, with alterations and Amendments adapted to its present system of Government*, published in 1808. The *Digest* was adopted by legislative act in March 1808. Section two of the act declared that “whatever in the ancient civil laws of this territory or in the territory state, is contrary to the dispositions contained in said digest, or irreconcilable with them is hereby abrogated.” The *Digest* was written in French and translated into English by translators employed by the Legislature. Moreau-Lislet specified that in case of inaccuracies in the translation, the French text should be consulted as authoritative. The *Digest* was distributed to all courts of justice and the other authorities charged with execution of the territorial laws.

There has been much debate about the exact sources Brown and Moreau-Lislet used when compiling the text of the laws in the *Digest*. Brown and Moreau-Lislet used the format of one of the drafts (projets) of the *Code Civil des Français*, published in France in 1804, for organizing



the Spanish laws. The redactors cited to various sources of Spanish law, such as the *Siete Partidas*, as well as French commentators on the civil law, such as Jean Domat and Robert Pothier. Once the *Digest* was translated from French to English, it became the first source of codified civil law available in English. The primary significance of the Legislature’s adoption of the *Digest* is the formal recognition and establishment of the civil law, not the common law, in the area of private law for the territory.

In 1817, The Louisiana Supreme Court held in *Cottin v. Cottin*, 5 Mart. (o.s.) 93 (La. 1817), that old Spanish laws remained part of the state’s written law unless expressly repealed by the *Digest* of 1808 or another source, or found inconsistent with the U. S. Constitution. This ruling meant that ancient Spanish law could be applied outside or in addition to the *Digest*, which led to the need for revising the *Digest*. The decision threw Louisiana’s substantive law into a state of chaos.



In March 1822, the Legislature appointed Louis Moreau-Lislet, Pierre Derbigny, and Edward Livingston to revise the *Digest*. This revision became the *Civil Code of Louisiana*, adopted by the Legislature in April 1824 and acquiring the force of law on June 25, 1825. When drafting the 1825 *Civil Code*, Moreau-Lislet, Livingston, and Derbigny closely followed the *Code Civil des Français* and relied heavily upon French doctrine and jurisprudence. The *Civil Code of Louisiana* diverged from the *Code Civil* in the areas of term definitions and the use of didactic materials. Even though the about eighty percent of the 1825 *Civil Code* contains provisions with exact counterparts in the *Code Civil*, the *Code Civil* was not at that time, nor ever, adopted in Louisiana.

That Moreau-Lislet, Derbigny, and Livingston would choose the *Code Civil des Français* as a model for revising the 1808 *Digest* comes as no surprise. The *Code Civil* was, and still remains, widely hailed as a masterpiece of rational legislation, free from past prejudices and based on universal principles that strove to make the law in the image of a better society. Prior to the French Revolution, laws in France weren’t uniform and varied from region to region. Generally, the northern provinces were governed by local feudal customs and the south France by Roman law. The need for uniform national legislation was great, but it wasn’t until the French Revolution that the opportunity arose to undertake the task. Several drafts of a code went nowhere until Napoléon became Chairman of a newly created council of state (Conseil D’Etat). The Conseil, with Napoléon as an active, engaged participant, discussed the draft in detail until it was finalized as the *Code Civil des Français*. Robert Pothier and Jean Domat had laid the foundation for uniformity in French law in prior centuries. Pothier took a systematic approach to resolving conflicting local customs, bringing them together as “customary common law.” Domat developed a conceptual technique and simplified the Roman law in force in the south France. The *Code Civil* provided a transition from the past to the present, consolidating the Revolution’s achievements.

In the draft of the 1825 *Civil Code*, the redactors identified the sources of the proposed amendments, deletions, and additions of the *Digest* and also commented on what prompted them to make changes. The drafters added Spanish law provisions that weren’t included in the 1808 *Digest*, along with provisions from territorial statutes and common law provisions. The treatises of Domat and Pothier are well-represented in the *Civil Code*; Charles Toullier, a commentator on the *Code Civil* who united theory and

practice, was included as well. The drafters also consulted the Digest of Justinian, *Las Siete Partidas*, the *Febrero Adicionado*, and other Spanish sources of law when drawing up the code.

As with the *Digest*, the *Civil Code of Louisiana* was written in French and translated, albeit poorly, into English. The 1825 Louisiana Civil Code was to be sufficient in itself, with an intention to break with the past. The drafters were concerned that the courts would bring back Spanish law and that common law provisions could be imported through legislative or judicial reference. In an “unprovided-for case,” the *Code’s* instructions were: “In all civil matters, where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, and appeal is to be made to natural law and reason, or received usages where the positive law is silent.” This provision of the *Civil Code* is well-regarded by many, and certainly influ-

enced by the *Code Civil*.

Changes brought about by the Civil War and a new Constitution required a revision of the *Civil Code*. In 1868 the Legislature authorized a joint committee to select commissioners to revise the *Code*. The committee selected John Ray of the Monroe, Louisiana bar. Ray was assisted by three attorneys to revise the *Civil Code*. The revision was published in 1870 under the title *The Revised Civil Code of the State of Louisiana*. The 1870 *Revised Civil Code* is regarded as a re-enactment of the 1825 *Civil Code* with all incorporated acts to date, plus the elimination of repealed articles and articles referring to slavery. These changes didn’t affect the substance of most of the *Code’s* provisions, its structure, or its underlying theory, though the articles were renumbered. The 1870 revision wasn’t intended to introduce sweeping changes or break with the past. The 1868 enabling act only provided for limited revision.

Therefore, some of the *Civil Code’s* provisions have remained unchanged since 1825.

The Spanish foundation of the Louisiana legal system has remained, and the tradition of codified laws is firmly established in Louisiana. The decision of the Territorial Legislature in 1806 to recognize the Spanish roots of Louisiana civil law ensured the survival of the civil law tradition in Louisiana. The Louisiana *Civil Code* isn’t an adaption of the *Code Civil* or a digest of Spanish laws. Louisiana has a sui generis legal system, and the civil law method of thinking about the law is deep-rooted. Napoléon once said, “What nothing will destroy, what will live eternally, is my Civil Code.” The same could be said for Louisiana’s *Civil Code*.

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