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## Forum Juridicum: The Louisiana Lawyer

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# Forum Juridicum

## The Louisiana Lawyer\*

*John T. Hood, Jr.\*\**

The feeling of pride which a Louisiana lawyer experiences in his profession today is due largely to his own accomplishments. That pride, however, is enhanced and strengthened materially by the deeds and reputations of other lawyers who have preceded him — lawyers who by their ability, devotion, character, and statesmanship have left an indelible impression upon the minds and hearts of succeeding generations. On this day, therefore, designated nationally as “Law Day — U.S.A.,” it is appropriate for us to review briefly the background of the Louisiana lawyer, and the contributions made by some of our predecessors in molding into the legal profession in this state a sense of responsibility and a high degree of integrity. These early Louisiana lawyers have bequeathed to us, as present and future members of the bar of this state, a justifiable sense of pride and satisfaction in our chosen profession.

It should be remembered that during the first years of Louisiana's existence as a state, it was not easy to obtain legal training. In some instances those who were authorized to practice law here acquired their legal education in Europe or in one of the few law schools which then existed in the eastern part of this country. For the most part, however, the early Louisiana lawyer received his legal training by studying alone or under the tutorship of some practicing attorney.

The first law school in this state was established in 1847, at the newly created “University of Louisiana,” located in New Orleans, which university was operated as a state-supported institution for 37 years, until 1884, when it became Tulane University. The first dean of that law school was Judge Henry Adams Bullard, a prominent lawyer, jurist, and statesman from Natchitoches. The Louisiana State University Law School was established in 1906, the movement to create such a school having been initiated by Colonel Arthur T. Prescott, with whom some of you

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were acquainted. The law school at Loyola University of New Orleans was organized in 1914 by the Honorable John St. Paul, who was then judge of the Orleans Court of Appeal and was later Associate Justice of the Supreme Court of Louisiana.

Since most of us here have a particular interest in the L.S.U. Law School, you may be interested in knowing something about its early history. The records of the University reflect that the law school was established in 1906 "in accordance with the existing standards of the American Bar Association." The requirements of the American Bar Association at that time for awarding an LL.B. degree were simply that the candidate must have a high school education and two years of college study leading to such a degree. In 1911, the curriculum was changed to require three years of study in order to obtain a law degree. From 1923 until the present time additional college work has been required as a prerequisite for admission to the law school.

The first dean of the L.S.U. Law School was Dr. Joseph I. Kelly, who studied law at Fordham. The first faculty consisted of Dr. Kelly, Colonel Prescott, and Professor Fleming. Robert Lee Tullis, whose portrait hangs just outside this room, was added to the faculty in 1907 as a professor of "Louisiana Jurisprudence." Three years after the school was established a dispute arose between Dean Kelly and Colonel Prescott relating to the curriculum of the law school. Colonel Prescott prevailed, and Dr. Kelly resigned as dean. Professor Robert L. Henry then served as acting dean for one year, and in 1910 Professor Tullis became dean of the law school, which position he held with distinction for many years.

During the first two or three years of the existence of the L.S.U. Law School, a substantial number of its students were mature men. Among the first students to enroll were: Captain Louis Sorley, who was then Commandant of Cadets at L.S.U.; Thomas H. Harris, who at that time was serving as State Superintendent of Education, which position he continued to hold for many years after completing his law course; and Eugene J. McGivney, who was then serving as Secretary of State for the State of Louisiana. Among the younger students who enrolled at that time was James E. Smitherman, who is presently serving as a member of the L.S.U. Board of Supervisors, and who, according to the records of the University, was one of the law school's top students scholastically.

The records indicate that a number of attorneys were practicing in this area before Louisiana was admitted into the union as a state. I will not endeavor to list their names, since most of them later qualified to practice law before the Louisiana Supreme Court.

The Supreme Court of Louisiana initially convened on the 1st day of March, 1813, and at that time it announced that on the following day it would decide upon the "examination of gentlemen desirous of licenses to practice and plead." The minutes of the court reveal that on the next day seven applicants were examined by the court and were granted permission to practice law in this state. Two days later other applicants were examined and were admitted to the bar. Among the lawyers who qualified to practice in Louisiana immediately after the Supreme Court initially convened were: John B. Prevost, who had previously served for two years as the first and sole judge of the Superior Court of the Territory of Orleans; Francois Xavier Martin, who edited and published the Louisiana Reports at his own expense for 20 years, and who previously had served as judge of the Superior Court of the Territory of Orleans, and later served for 31 years as a member of the Louisiana Supreme Court; Edward Livingston, John R. Grymes, L. Moreau-Lislet, and Etienne Mazureau.

It is interesting to note that on March 9, 1813, Pierre Derbigny, who had been a practicing attorney in the Territory of Orleans, was sworn in and took his seat as one of the judges of the Supreme Court of the State of Louisiana. The records of that court reveal, however, that it was not until seven years later, in 1820, that Derbigny was examined and was admitted to practice law in this state.

An actual count reveals that in 1823, or ten years after the Supreme Court held its first session, a total of 63 lawyers had been admitted to practice law in the State of Louisiana.

The qualifications which an applicant must have for admission to the bar in this state have always been determined by the Supreme Court, except for a brief period during recent years when the Legislature somewhat restricted the power of the court in that respect.

When the Supreme Court first convened in 1813, it appointed a committee of five lawyers to draw up rules and regulations for

the government of that court. Judge Martin, Edward Livingston, and Etienne Mazureau were members of this committee. Three months later, perhaps in accordance with the recommendations of this committee, the Supreme Court issued an order providing that no person shall be examined for the purpose of admission as a "counselor or attorney" unless he produces a certificate of having been in the office of some practicing attorney for at least three years prior thereto — or unless he produces a license given in any other state or territory of the union — or unless he had previously been admitted to practice under the late territorial government.

Three years later another order was issued by the Supreme Court providing that "candidates for admission to the bar who have taken a degree in one of the incorporated seminaries in the United States or their territories, may be examined on showing they have studied two years under the direction of one of the attorneys duly admitted in this state."

Three years after that, or in 1819, the court further ordered that "candidates for admission to the bar, who shall give satisfactory assurances to the court that they have received a good classical education, although they may not have taken degrees in any college, may be examined on showing that they have studied two years under an attorney duly admitted to practice in this state."

I will not attempt to give a history of the requirements which have been laid down by the Supreme Court from time to time for admission to the bar in this state, but it is interesting to note that the "diploma privilege" was granted in a number of instances prior to 1870 — that is, applicants were admitted to practice simply upon exhibiting to the court a diploma from a law school.

The requirements for a license to practice law in this state appear to have been relatively light until 1869, when the Supreme Court adopted a new set of rules listing all of the subjects on which an applicant must be proficient before he would be permitted to engage in the practice of law. These new requirements were of such a nature that I am sure they would frighten a law student of today. In addition to requiring that the applicant be well read in the Civil Code, the Code of Practice, the statutes and jurisprudence of this state, criminal law and other subjects which are common to most of us today, these rules also required

that he be well read in Vattel's "Laws of Nations," in Wheaton's "Elements of International Law," in "The Institutes of Justinian," in Bomat's "Civil Law," Pothier's "Treatise on Obligations," "Blackstone's Commentaries," "Kent's Commentaries," and "Smith on Mercantile Law."

During these early days a number of lawyers understood and spoke only the French or Spanish languages. Interpreters were used frequently during trials in order that the record could be made up in the English language. In arguing cases before a jury, however, a lawyer would speak in his own tongue, and it was a common practice for every juror who did not understand that language to be excused from the courtroom until another lawyer who argued in a language which he did understand addressed the jury. With that background, I found the following entry in the minutes of the Supreme Court, dated May 7, 1821, to be interesting:

"The judges find it necessary to make it known that they expect that no application for a license to plead will be made by any gentlemen not acquainted with the legal language of the state. It is true we have translations of our laws, and those may suffice to direct the citizen in the ordinary transactions of life. But he who aspires to the high honor of being consulted on, and to explain these laws to his fellow citizens and the court, must be able to read the text. Very few of the acts of congress, which form a considerable portion of our written laws, paramount to the acts of our state legislature, indeed are translated. The records of suits must be preserved in the same language as the laws, and the judges cannot designate as learned in the laws, and qualified to give legal advice and to carry on a law suit, one who is so ignorant of the legal language of the state as not to be able to read the text of the laws or to undergo an examination in it."

Perhaps the ablest of the early Louisiana lawyers was Edward Livingston, whose life was marred by a number of misfortunes. He came to New Orleans and opened an office for the practice of law in 1804. Prior to that time, however, he was admitted to the New York bar and practiced in New York City, where he rapidly rose to distinction, serving while still a young man as a Representative in Congress, as United States District Attorney, and as Mayor of the City of New York. While serving as mayor of that city, however, a loss of public funds through

the dishonesty of one of his clerks caused him to lose all of his fortune and his political offices. Shortly after moving to New Orleans he became engaged in a controversy with General James Wilkinson, during the course of which the latter publicly accused Livingston of treason — an accusation which had no basis in fact but which injured Livingston materially. In connection with his famous "Batture Case," which was litigated for 17 years, President Jefferson published and distributed a 91-page pamphlet in which he attacked Livingston's integrity. Although Livingston immediately published a pamphlet replying to the charge and later instituted a personal action for damages against President Jefferson, this controversy also injured him.

In spite of these misfortunes, however, Livingston's extraordinary legal ability was recognized. While living in Louisiana he served as a member of the State Legislature, as Representative in Congress, as United States Senator, as United States Secretary of State under President Jackson, and as Minister to France.

Aside from his contributions in the political field, Livingston developed an extensive and lucrative law practice in Louisiana. He prepared the Louisiana Practice Act of 1805, which regulated legal procedures in this state for 20 years. At the request of the State Legislature, he drafted a criminal code, which was published and became known as the "Livingston Code," and although it was not adopted in Louisiana, it made Livingston an international celebrity and characterized him as one of the foremost legal philosophers of his time. In 1822 the Legislature appointed Edward Livingston, Moreau-Lislet and Pierre Derbigny as a commission to draft a Commercial Code and a Code of Practice, and to revise the Civil Code of 1808. All three of these codes were completed and submitted to the Legislature during the following years. The Commercial Code was not adopted, but the Code of Practice and the Civil Code drafted by this commission were adopted by the Louisiana Legislature in 1824 and became effective in 1825. The Code of Practice must have been largely Livingston's own work, and it has sufficed without fundamental change to this day. Most of the important chapters of the Civil Code of 1825, including all those on contracts, were prepared by Livingston alone.

L. Moreau-Lislet, a contemporary of Livingston, also contributed much to the legal literature and law of Louisiana. In

1806 he published an explanation of the criminal laws of the Territory of Orleans; he collaborated with James Brown in the preparation of the Civil Code of 1808; with Henry Carleton he translated the *Partidas* in 1819; with Livingston and Derbigny he assisted in preparing the Civil Code of 1825, the Code of Practice of 1825, and a Commercial Code; and in 1828 he published a digest of statutes which today is of practical value when reference must be made to the exceedingly rare territorial acts. He served as a member of the Louisiana Legislature, as a parish judge, and as Attorney General. He was one of the eminent lawyers of his day, and apparently he was a busy one, for the reports of the Supreme Court reflect that he participated in over 200 cases before that court.

Charles Gayarré has described Moreau-Lislet in these words:

“His eyes sparkle with good natured wit under the large spectacles which bestride his small nose. Everything seems soft in him, even his bones. His flesh is tremulous, like blanc-mange or a jelly, and as yielding under the touch. His hands are diminutive and plump. He does not look formidable, does he? No. Well you had better beware of him. He is an artesian well of legal lore — deep, very deep. . . . Of so sympathizing a nature is he that, for instance, he sometimes takes up his adversary’s side of the question, admits that there is a good deal to say in his favor, and says it and shows it too. He will even go so far as to present it to the court in its very best aspect. But after having thus acted with such kindness and impartiality toward his opponent, he pathetically apologizes for destroying all his hopes and illusions, regrets that his claim is not founded on the law and evidence applicable to the case, demonstrates it beyond the shadow of a doubt, and finally exterminates the poor fellow with a sigh of compassion over his hard fate. Ho, Ho! Beware of Moreau-Lislet and his bonhomie!”

Although the accomplishments of Judah P. Benjamin are well known, it is appropriate for us to review briefly his contributions to the legal profession. He began studying law alone at night when he was 16 years of age. Within two years after being admitted to the bar he compiled and published a digest of all cases adjudicated by the Superior Court of the Territory of Orleans and the Supreme Court of Louisiana. By the time he

was 25 years of age he had established himself as a seasoned and highly successful practitioner.

Benjamin served as a member of the State Legislature, a delegate to two state constitutional conventions, and as a United States Senator. He was offered an appointment as an Associate Justice of the United States Supreme Court, which he declined. In the United States Senate he was an outstanding leader in behalf of the South in opposing legislation which eventually led to the Civil War. In the Confederate States of America he served successively as its first Attorney General, as Secretary of War and finally as Secretary of State. When the confederate army was defeated, Benjamin made his way to England, and because of his international prominence as a lawyer he was admitted to the bar of that country within six months after his arrival. Two years later he published a book commonly referred to as "Benjamin on Sales," which still remains a standard authority on that subject in England. He established a large and lucrative practice there, as he had done in Louisiana, was appointed queen's counsel, was elected a bencher of Lincoln's Inn, and was mentioned prominently for a judgeship. He left an enviable record as a lawyer both in America and in England.

One of the most colorful of early Louisiana lawyers was Pierre Soulé, who was born and began the practice of law in France. After being convicted and imprisoned there for committing a political offense he escaped and came to America, arriving in New Orleans in 1826. He studied law under Lislet and within five months after his arrival he passed the bar examination. Thereafter he became a member of the New Orleans City Council, a delegate to the constitutional convention of 1844, a member of the State Legislature, a United States Senator, Minister to Spain, and a general in the confederate army. For a number of years he was a member of the Supreme Court's bar examining committee, and he assisted in the original organization of the Louisiana Bar Association in 1847. It was largely through his efforts and those of Judah P. Benjamin that the University of Louisiana was established. Soulé distinguished himself particularly in the practice of criminal law. He was known as the "Silver Tongued Orator," and a prominent writer of his day wrote that his eloquence was "unrivaled at the New Orleans bar and even in England."

His colorful personality may be illustrated by an interesting

but unimportant incident which occurred in 1846. While Soulé was defending a man charged with stealing a knife, he was held in contempt of court by Judge McHenry and was sentenced to be confined in the parish jail for 24 hours and to pay a fine. The records leave no doubt that the conduct of Soulé on that occasion was such that the action of the court was justified. His friends, however, immediately subscribed the amount of the fine, and \$100.00 extra for Soulé, and then hired a taxi to take him to jail. Friends visited him constantly during his confinement, he was serenaded twice by a brass band, delicious food, sauterne and champagne were served to him while in jail, and his fellow members of the State Legislature, after their adjournment, waited in a body for his release. As Soulé left the prison in a carriage, a parade of admirers with banners and music accompanied him from the jail to a point directly in front of the courthouse where Judge McHenry was holding court. There the procession halted, and the noise and confusion which followed completely disrupted the court procedure until the procession moved on its way. Newspapers writing up the incident violently disagreed as to whether Soulé should or should not have been held in contempt of court. Eventually a motion was made in the Legislature petitioning the Governor to remove Judge McHenry because of his overbearing, vindictive, and arbitrary conduct. After considerable discussion this motion was tabled by its author, and the incident thereafter was forgotten, but Soulé's popularity continued. This early Louisiana lawyer obviously added a touch of glamor and excitement to the practice of law.

Briefly, I will mention only a few other prominent Louisiana lawyers of that day. John R. Grymes, whose reputation as a lawyer extended far beyond the State of Louisiana, participated in Livingston's "Batture Case," represented General Jackson in the United States Bank case, and he opposed Daniel Webster in the famous case of Myra Clark Gaines against the City of New Orleans. Pierre Derbigny, one of the first judges on the Supreme Court of Louisiana, also served as the fifth Governor of this state, as Mayor of the City of New Orleans, as a member of the State Legislature, as Secretary of State, and as the operator of the first steam ferry on the Mississippi River at New Orleans. Etienne Mazureau, one of the first lawyers to be admitted to the bar by the Supreme Court, served as Attorney General of the state for many years.

I have purposely omitted a lengthy discussion of the distinguished jurists which Louisiana has produced, such as Judge Francois Xavier Martin, an eminent historian as well as a jurist, Chief Justice Francis T. Nichols, who before becoming Chief Justice had been a general in the confederate army and had served two terms as Governor of the State, Chief Justice Thomas Courtland Manning, who edited and published "Manning's Unreported Cases," and the Honorable Edward Douglass White, who served for 11 years as Chief Justice of the United States Supreme Court. In discussing the background of the Louisiana lawyer, however, I felt it more appropriate to consider those early members of the bar who distinguished themselves as lawyers rather than as jurists.

A review of the lives of these early patriarchs should inspire us to meet the challenges of today with the courage and wisdom which they exhibited as they charted the course of the legal profession in this state. It also should remind us that the responsibility for maintaining the standard of efficiency and integrity which they have set rests upon those of us who are now or will be the practicing attorneys of this state.

The background of the Louisiana lawyer indeed is rich, and I submit that the feeling of pride which he experiences in his profession is justified.