

LOUISIANA SUPREME COURT JUSTICES:

PROFILES OF THREE RECONSTRUCTION-ERA JUSTICES

By Evelyn L. Wilson

Nineteen justices served on the Louisiana Supreme Court during the period 1865-1880.

They are properly divided into three distinct periods of service. The justices selected to serve in 1865 were supporters of the Union. They faced the task of bringing order to chaos.

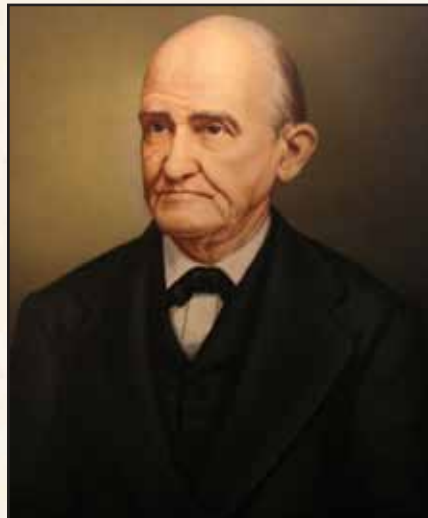
Louisiana's 1868 Constitution ended their terms. The 1868 court included two justices from the earlier court and three new appointees. Republican governors appointed Republicans and Union supporters to the court. Operating in the face of open hostility from practitioners who had fought for or supported the Confederacy, this court was careful to examine the applicable law and to explain its reasoning thoroughly.

In 1877, the era of Reconstruction ended when Democrats gained control of the state. The set of justices appointed in 1877 qualified by their commitment to the Confederacy or by their opposition to the federal influence in the state. Though considered political conservatives, they were judicial activists.

The Civil War and Reconstruction years were not easy times for any of these men. Sentiment ran high and violence was common. Criticism was as harsh as it was unwarranted. The work of the court is a testament to the integrity of these justices, to their commitment to service, and to their devotion to the law. In each period, one man stands out as characteristic of that court.

1865-1868

James Govan Taliaferro, born Sept. 28, 1798, in Virginia, moved to Catahoula Parish in 1815 where his father established



Louisiana Supreme Court Associate Justice James Govan Taliaferro. Published with permission from the Louisiana Supreme Court Archives.

a small sawmill. His biographer described him as "a poor boy, with only his energy and honesty for patrimony."¹ He attended Transylvania University in Lexington, Kentucky, where he met the statesman, Henry Clay. He was admitted to the Kentucky Bar in 1820 and returned to Harrisonburg, La., where he established a law practice and entered politics.²

Taliaferro served as parish judge for many years and served in Louisiana's 1852 and 1868 Constitutional Conventions. He was a staunch supporter of the Union. As early as 1856, he published a scathing denunciation of secession in his newspaper, the *Harrisonburg Independent*.

He raised sheep and cattle and was an authority on the geological characteristics of Catahoula Parish. He was a scholar of classical studies, science and history, and owned a large collection of books and

Indian relics.³

At the 1861 Secession Convention, Taliaferro was one of 17 delegates who opposed the ordinance of secession, and one of nine who refused to sign it. He delivered a Protest to the convention objecting to secession. During the war, he was carried to a military prison but stayed only a short while.

After the war, as a Conservative Republican, Taliaferro actively sought Louisiana's readmission to the Union.⁴ He served as president of the 1868 Constitutional Convention that produced a Constitution acceptable to Congress⁵ and voted in favor of free public schools open to all children without distinction of race, color or previous condition.

In the state elections that followed, Taliaferro was a candidate for governor. He received support from Radical Republicans, Democrats and conservative newspapers but was easily defeated by Henry Clay Warmoth, who received the majority of the votes from the new black voters.⁶ Taliaferro had been a slaveholder and an opponent of equality for blacks. Warmoth of Illinois had not. Newly elected Governor Warmoth reappointed Taliaferro to the Louisiana Supreme Court, where he served until shortly before his death.

Once on the Supreme Court, Taliaferro changed his position on slavery, declaring it a violation of the natural right of freedom.⁷ His participation alongside blacks and his vote in favor of universal education suggest that he accepted political equality, if not social equality. His turnaround was acknowledged when Governor P.B.S. Pinchback chose him to administer his oath of office.

Justice Taliaferro served on the Supreme Court with Zenon Labauve from West Baton Rouge Parish; John Ilsley from New Orleans; William Hyman from Alexandria; and Rufus King Howell from West Feliciana Parish. He died at age 78 on Oct. 13, 1876.

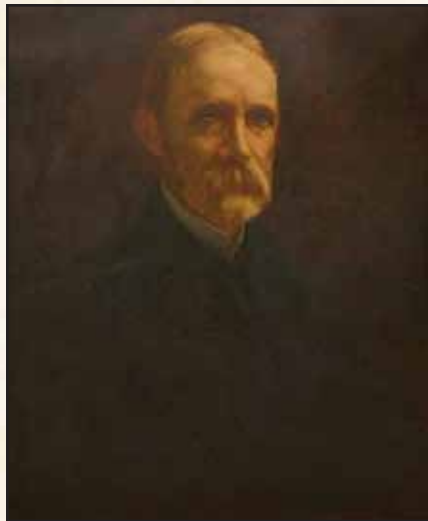
1868-1877

William Wirt Howe, born in New York, came to New Orleans during the war. Valedictorian at Hamilton College in New York, Howe studied law in St. Louis and settled in New York City, where he practiced law.⁸ He enlisted in the war, was taken prisoner, paroled and returned to service. He served as adjutant-general on the staff of Major General Ulysses S. Grant.⁹ In 1863, he qualified by the Board of Examiners for Major in the 1st Regt. Cavalry Corps d’Afrique, Headquarters Department of the Gulf.¹⁰

Howe was one of more than 5,000 Union soldiers who settled in Louisiana after the war.¹¹ He established a law practice,¹² and Governor Warmoth appointed him to the Louisiana Supreme Court in 1868.¹³ Howe served with Rufus King Howell of West Feliciana Parish, James Govan Taliaferro, John T. Ludeling of Ouachita Parish as Chief Justice and W.G. Wyly of Carroll.

Howe resigned from the Supreme Court shortly after the November 1872 contested election to become more involved in the civic and social activities of the city. The court, with its Republican and anti-secession members, was ostracized by the practicing bar, many of whom had fought for the Confederacy.

In private practice, Howe became legal counsel for the Texas and Pacific Railway Company, the New Orleans Board of Trade and the Louisiana Sugar Refining Company. He took an active part in civic and philanthropic work in the city and was involved in various capacities with the University of Louisiana, the New Orleans Art Association, the New Orleans Chamber of Commerce, the New Orleans Board of Trade, New Orleans Charity Hospital, the Louisiana Historical Society, the New Orleans Board of Civil Service, the Board of Trustees of the Eye, Ear, Nose



Louisiana Supreme Court Associate Justice William Wirt Howe. *Published with permission from the Louisiana Supreme Court Archives.*

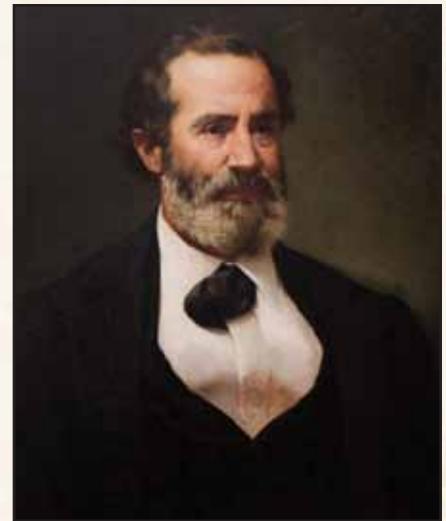
and Throat Hospital, and the Society for the Prevention of Cruelty to Animals. He was an Episcopalian vestryman and senior warden of Christ Church Cathedral.¹⁴

Howe, an active member of the bar, was president of the American Bar Association in 1897. He focused on the professional ethics of lawyers and lectured at law schools and before state and local bar associations. In 1899, Hamilton College conferred upon him an honorary Doctor of Laws degree.¹⁵ From 1903-1909, he sat on the Board of Trustees of the Carnegie Institution of Washington.

In 1900, President William McKinley appointed Howe as the United States District Attorney for the Eastern District of Louisiana, where he served until 1907, when his declining health compelled him to resign.¹⁶

A prolific author, Howe wrote scholarly articles on Roman law, Spanish law and the law within the Territory of the Louisiana Purchase. He wrote historical pieces on ancient and medieval law schools and wrote a history of New Orleans. His works appeared in the nation’s leading law journals.¹⁷

Judge Howe gave an address to the Louisiana State Bar Association on Jan. 8, 1909, and was to have spoken to the Executive Committee of the American Bar Association. He was unable to do so



Louisiana Supreme Court Associate Justice Jean Maximilien Alcibiades Derneville DeBlanc. *Published with permission from the Louisiana Supreme Court Archives.*

and, after that date, remained at home until his death.¹⁸

1877-1880

Jean Maximilien Alcibiades Derneville DeBlanc was born Sept. 16, 1821, in St. Martinville, La. He read law and was admitted to the Louisiana Bar in 1845. He practiced in St. Martinville. DeBlanc served in the state Legislature and the 1861 Secession Convention, where he advocated for secession.¹⁹ A large landowner and slaveholder, DeBlanc was nearly 40 years old when he enrolled to serve the Confederacy at Camp Moore in Tangipahoa Parish. He helped to organize the Attakapas Guards, Company C, Eighth Regiment, Louisiana Infantry, and served as captain. Francis R.T. Nicholls, who would later appoint DeBlanc to sit on the Louisiana Supreme Court, served in the Eighth Regiment with him.²⁰

DeBlanc’s regiment was assigned to the Department of Northern Virginia, and DeBlanc was promoted to the rank of lieutenant colonel at Fredericksburg on April 6, 1863. He was permanently disabled in his right arm at the Battle of Gettysburg and promoted to the rank of colonel.

DeBlanc was one of three military officers sent by Major General Harry

Hays to Baton Rouge on May 23, 1865, to negotiate the surrender of the Confederate troops still operating in Louisiana. DeBlanc's military records include the remark that DeBlanc was a perfect gentleman and an excellent officer. It stated that all respected, obeyed and loved him.²¹

After the war, DeBlanc returned to St. Martinville and served as a parish judge. On May 22, 1867, DeBlanc and Daniel Dennett of Franklin, managing editor of the *Planter's Banner*, organized a White Man's or Caucasian Club in Franklin. The White Man's Club sought to offset the growing political power of blacks. Similar groups were organized across the South and combined to become the Knights of the White Camellia, an anti-Republican secret fraternity similar to the Ku Klux Klan. The *Planter's Banner* was the clandestine voice of the Knights.²²

In May 1873, DeBlanc led an insurrection in St. Martin Parish to protest Governor William Pitt Kellogg's government. DeBlanc encouraged his supporters to refuse to pay their state taxes and organized an army of 600 local men to prevent the Republican government from taking office.²³

A dispatch sent to the *New Orleans Republican* newspaper read: "The fiery orator of the Attakapas, Colonel Alcibiades DeBlanc, is traveling through the country stirring his followers up to deeds of desperate valor . . ." ²⁴

Governor Kellogg sent Metropolitan Police from New Orleans to confront the Knights of the White Camellia. In the exchange, two of the Metropolitan Police were killed. DeBlanc surrendered to Federal Marshal DeKlyn and was held prisoner on board the ship *Lucretia*. When the ship arrived at Morgan's Landing in New Orleans, 6,000 people met it and gave DeBlanc a hero's welcome. DeBlanc was acquitted and released.²⁵

DeBlanc served on the Supreme Court from 1877 until 1880 with Robert Hardin Marr of Orleans Parish, Thomas Courtland Manning of Rapides Parish, William Brainerd Spencer of Concordia Parish and William B. Giles Egan of Caddo Parish. He died in St. Martinville in 1883.

Conclusion

The Reconstruction Courts left little impact on the state's laws. They were interim courts. Although many of the justices who served on these courts were extremely well-trained and talented, they were victims of their times. Their work was largely negated by the events of the day. Their enforcement of the equal protection articles of Louisiana's 1868 Constitution and subsequent legislation²⁶ was aborted by United States Supreme Court decisions that refused to require states to abandon discrimination based on skin color²⁷ and by revisions to Louisiana's Constitution made in 1879.²⁸ Their decisions on proper criminal procedure²⁹ did not cause permanent reform in the administration of justice in the state.³⁰

These courts effected no radical change in the law but followed it closely to provide some stability during a time of political, social and economic upheaval. Perhaps the greatest contribution of these courts was that they operated with some level of success amidst the turmoil of post-Civil War Louisiana and that they carried forward the rule of law.

FOOTNOTES

1. *In Memoriam* (Taliaferro), 28 La. Ann. vii.
2. 2 Dict. of La. Biog. 778.
3. Wynona Mills, *James Govan Taliaferro (1798-1876): Louisiana Unionist and Scalawag* 9 (Jan. 1968) (Unpublished Master's Thesis available at LSU Library).
4. Conservative Republicans had opposed secession, but objected to the political equality of the newly freed slaves. Radical Republicans supported equality.
5. Louisiana's 1864 Constitution was rejected by Congress because it did not grant black males the right to vote.
6. Henry Plauche Dart, *History of the Supreme Ct. of Louisiana*, Centenary of Louisiana Supreme Court 6, 28 (1913).
7. *Wainwright v. Bridges*, 19 La. Ann. 234, 236-237 (1867).
8. *In Memoriam* (Howe), 127 La. Ann. xxv (1909).
9. William Wirt Howe, Military Service Records, M589 Roll 42, National Archives.
10. Evelyn Wilson, *Laws, Customs and Rights* 51. The Department of the Gulf advertised for applicants to appear before the Board of Examiners at Department Headquarters to be examined for commissions in U.S. colored regiments. *Daily Picayune*, Mar. 31, 1865, at 4, col. 4.
11. John Hope Franklin, *Reconstruction After the Civil War* 92.

12. *Daily Picayune*, Mar. 18, 1909, at 4, col. 1.
13. 17 Minute Book 127 (Nov. 2, 1868).
14. IX *Dict. of Am. Biog.* 300 (1932).
15. *In Memoriam* (Howe), 127 La. Ann. xxv (1909).
16. IX *Dict. of Am. Biog.* 300.
17. Dargo, *Am. Natl. Biog.* 345.
18. *Daily Picayune*, Mar. 18, 1909, at 4, col. 1.
19. Editorial, *Obituaries, Daily Picayune*, Nov. 10, 1883, at 2, col. 2.
20. Francis R.T. Nicholls was governor of Louisiana from 1877-1880 and again from 1888-1892.
21. DeBlanc, Military Service Records, M320 Roll 190, National Archives.
22. Official Website for the Knights of the White Camellia, Ku Klux Klan, Realm of Virginia (on file with author).
23. Gilbert King, *The Execution of Willie Francis* 43-44. Franklin, *supra* n. 11 at 47-38, 139-142.
24. Stuart Landry, *The Battle of Liberty Place* 57.
25. I *Dict. of La. Biog.* (Alcibiades DeBlanc) 222.
26. La. Const. of 1868, arts. 2. ("All persons, without regard to race, color, or previous condition thereof, . . . shall enjoy the same civil, political, and public rights and privileges, and be subject to the same pains and penalties."); *Joseph v. Bidwell*, 28 La. Ann. 382 (1876) (Peter Joseph, denied a seat at the Academy of Music, was awarded damages); *Sauvinet v. Walker*, 27 La. Ann. 14 (1875), *aff'd.*, 92 U.S. 90 (1875) (C.S. Sauvinet, denied a drink at a coffeehouse, was awarded damages); *Decuir v. Benson*, 27 La. Ann. 1 (1875), *rev'd*, 95 U.S. 485 (1877) (Mrs. Decuir, denied access to the Ladies' Cabin on a steamboat, was awarded damages).

27. *See, e.g., Hall v. Decuir*, 95 U.S. 485 (1877), which reversed the decision in *Decuir v. Benson*, 27 La. Ann. 1, and *Plessy v. Ferguson*, 163 U.S. 537 (1896), which endorsed separation by skin color.

28. Louisiana's 1879 Constitution does not contain language, included in its 1868 Constitution, intended to protect the civil and political rights of blacks, particularly art. 1, "All men are created free and equal . . .", art. 2, "All persons, without regard to race, color, or previous condition . . . are citizens of this State," and art. 13, "All persons shall enjoy equal rights and privileges . . ." La. Const. of 1868, arts. 1, 2 and 13.

29. *See, e.g., La. v. Nunn*, 29 La. Ann. 589 (1877).

30. *See, e.g., La. v. Jones*, 700 So.2d 1034 (1997) (Counsel did not file a written opposition to the habitual offender bill of information, nor did counsel object to the defects in the state's proof. The court determined that there was a reasonable probability the outcome of the proceeding would have been different had counsel made the proper objections.)

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