

July 2021

The Lawyers' Tool Chest

Fred Y. Holland

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Fred Y. Holland, The Lawyers' Tool Chest, 9 Dicta 352 (1931-1932).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

THE LAWYERS' TOOL CHEST

*By Fred Y. Holland, Librarian, Supreme Court Library**

THE enormous and constantly increasing number of law books presents a problem which should receive the prompt and careful consideration of the Bench and Bar. This increase involves a growing expense to the lawyer, and almost interminable labor in exhaustive research.

The multiplicity of the implements of the legal profession, and how the enormous expense and labor involved may be reduced, is not a new problem confronting the Bar. In Bacon's time, when the printed reports and statutes of England had grown to the "unbelievable extent of 50 or 60 volumes", the evil was so great, in his opinion, as to require a re-compiling of the common law. It is stated in "Hoffman's Legal Study", published at Baltimore, in 1838, that "the increase in this portion of our literature within the last 30 years has no parallel in the judicial history of any other country. More than 450 volumes of American law books now load our shelves, and the number of British books of reports is equally extensive."

Consider then, by comparison, the fact that the accumulation of law books in the law division of the Library of Congress in 1931, reached a grand total of 260,000 volumes, and that the number accessioned, in the fiscal year of 1930-31, numbered over 20,000 volumes. Complaint was made to Congress that the library was by no means complete, and thereupon an additional appropriation of \$50,000 per annum was made with which to buy books.

The law library of Harvard University is the most extensive and complete in the United States. It contains over 340,000 volumes, and has a staff of 52 employees. The Bar Association Library of the City of New York lists 181,194 volumes and maintains a staff of 33 employees. The average state owned library, of which your Supreme Court Library is one, contains about 50,000 books, periodicals and pamphlets. The normal increase of an average library is about 600 volumes per year, and it is generally operated by a staff of five

*A paper presented to the Law Club.

persons, namely, a librarian, two assistant librarians, a cataloguer and stenographer.

The matter of the increasing number of *court reports* engaged the attention of the American Bar Association as early as 1884. In a speech before the Association that year, (Reports, Am. Bar, Vol. 7, P. 224) Mr. John F. Dillon estimated the number of judicial reports at 3,000 volumes, and stated that they were growing at the enormous rate of 100 volumes per year and that the problem presented was of serious and pressing moment. In 1894, (Reports Am. Bar, Vol. 17, P. 72) the President of the American Bar Association appointed a special committee to look into the matter of law reporting throughout the Union, with the view of reducing the number of reports and greatly decreasing the expense. The following year that committee rendered its report and said, "the increase in the number of reports is, upon the whole, by far the most serious aspect of the question in hand. It is also the problem the most difficult of solution since the causes are deep seated and irremovable, being connected with the foundation of our system of law and government." It was suggested, "that fewer cases should be reported, withholding from publication opinions which have no importance in explaining or developing the law; that state reports should contain only decisions of courts of last resort, except possibly the opinions of courts of state-wide jurisdiction, and that unnecessary duplication of the same matter in different series of reports should be avoided." Little, if anything, resulted from these suggestions, and up to the present time, no appreciable progress has been made towards solving the problem.

The question confronting the American Bar Association at that time is fundamentally the same today, but its importance has increased many fold on account of the vast multiplicity of books published in recent years. The paramount objection today, in my opinion, is the expensive and unnecessary duplication within each class of books.

To illustrate, is it necessary that there be three different and distinct editions of the United States Supreme Court reports; namely, the official "United States Reports," the "Supreme Court Reporter," the "Lawyer's Edition" and printed advance sheets for each? I desire to say here that I do not

under-estimate the value and the attractive features of any one of the three. Each has certain exclusive and desirable qualities.

It is true that the law, in keeping with the progress of the times, is constantly expanding and embracing new fields of activity; for instance, several new volumes of statutes, reports and treatises have recently been published on the subject of air-law, both radio and aeronautics, and hundreds of volumes are now devoted to the subjects of Automobile Law, Workmen's Compensation, Prohibition, and Woman Suffrage.

Law books may be divided into two general classes: First, those published officially and which are the repositories of the law; namely, constitutions, treaties, statutes and the reports of courts of last resort. These publications, being the tangible evidence of the law, are essential to any complete law library. Second, unofficial and private publications; namely, books that explain and expound the law; and the search-books that aid the lawyer by directing him to the places where he may find the law.

The Bible furnishes an interesting account of one of the earliest published statutes. It is related in the Book of Exodus, Chapter 20, that about the year 1491 B. C., Moses was called to the top of Mt. Sinai, and there was delivered unto him two tablets of stone upon which were written the laws to govern the children of Israel, with full instructions as to their care and execution. (What a "find" those stones would be for some modern bibliophile.) If those stones turned up today they would no doubt be republished in at least a dozen different editions and forms, including an annotated one with pocket supplements. The price would depend entirely on the importance of the laws to the profession, the necessity of acquisition, and the location of the publisher: For example, if published locally, the price would probably be somewhere in the neighborhood of \$45.00; if published in the East, probably \$25.00, at \$5.00 down and \$5.00 per month; and if published in Oklahoma no doubt in a "two-in-one" edition, as its state reports are published, and sold at auction prices.

The legislative mills of the United States are turning out laws at the estimated rate of about 18,000, biennially, according to the figures produced in the July, 1930, issue of State

Government, (P. 2), which is very ably edited and published by our own Senator Henry Toll, President of the American Legislators Association. Indeed, this fact is not surprising when one considers that there are 52 jurisdictions, each having a separate and distinct Legislature. Enactments of the Legislatures are variously entitled: Session Laws, Codes, Amendments to the Codes, Resolves and Acts, and Acts. These different titles have no precise meaning in practice, but are generally referred to and cited simply as session laws. Books of statutes dating from the revolutionary period to the present, are numbered by the thousands. Indeed, I have on my desk a volume entitled "Massachusetts Hand-List of Statutes", published in 1912, wherein is listed all the statutes published up to that date. This book contains 681 pages and is 7 x 10 inches. It would probably require weeks to make an accurate count of all the statutes therein listed.

Acts of Congress are published officially and unofficially in many forms. In addition to the advance sheets are the "Statutes-At-Large", "Revised Statutes", "Compiled Statutes", "Federal Statutes, Annotated", "Mason's U. S. Code", and just recently there has been completed the official "U. S. Code, Annotated", which in my opinion, represents the last word in statute publishing. In several of the most populous states as many as four different series of official and unofficial statutes are published at every session of the Legislature. Each one has distinctive and attractive features, but the unnecessary duplication adds to the multiplicity of law books.

The most numerous of the repositories of the law are the court reports. Published opinions of the courts of last resort number more than one and one-half million cases down to 1920, and fill over 12,000 volumes. Since the reign of Edward I, the opinions of Judges of the highest courts have been recorded and treated as precedents. Lawyers, therefore, must not only have access to all the reports of the courts of last resort but in order that this information may be readily accessible, it is desirable that these reports be furnished the profession in advance of their official publication. Private publishers are, therefore, engaged very extensively in the publication of numerous series of unofficial reports, and there has grown up a quadruple system of official and unofficial reports,

reprints and annotated sets, each having certain features which appeal to the profession.

A comprehensive table, showing the growth of American case law, is published in a very excellent work on the subject of legal bibliography, entitled "Methods and Materials of Legal Research", 1923, by Frederick C. Hicks; law librarian of Columbia University. It is therein stated that on June 30, 1922, the Columbia University Law Library contained 18,333 volumes of American reports, including all kinds of official and unofficial sets that had theretofore been published. Whereas, the total number of English, Irish and Scotch reports in the library on the same date was only 5,030 volumes, and there were 3,000 volumes of British Colonial reports. He also points out the growth of American case law, as follows: In 1801, there were 5 volumes; in 1848 this number had increased to 800 volumes; in 1910 to 8,210 volumes; and in 1922 to 18,333 volumes. Note that in the period between 1910 and 1922 the increase in American Law Reports was over 10,000 volumes.

In England, all law reports are published by private publishers, whereas in the United States every jurisdiction has a series of official law reports published by the state, in addition to those published by private enterprise.

In 1878, a weekly journal bearing the name of "The Sylibi" was started in St. Paul, Minnesota. It contained copies of selected decisions of the Supreme Court of that state. In a few months' time its name was changed to the "Northwestern Reporter" and it was enlarged to include all Supreme Court decisions of Minnesota, notes of Wisconsin cases, all decisions of the Circuit Court of Minneapolis, selected cases from the lower State Courts, and abstracts of decisions of special interest from other states. From this undertaking grew the idea of issuing currently in one publication, all opinions as reported by the courts in a group of adjoining states. The present Northwestern Reporter was begun in 1879. Gradually the reporter system was extended until in 1888 it covered the entire United States. At the present time it consists of ten separate units and totals over 2,000 volumes.

This National Reporter System has many attractive features. Indeed, the alert and enterprising publishers of these

well-known reports have taken advantage of their opportunities to add many attractions not found elsewhere, which makes their use practically indispensable to the profession. Principally, these features are: The key-number system, begun in 1908, and printed copies of many reports of courts not found elsewhere. For example, at present, the Texas Court of Civil Appeals reports are found only in the Southwestern Reporter, the official reports having been discontinued at volume 63, in 1911. Also the U. S. Circuit Court of Appeals Reports and the U. S. District Court Reports are now published in the Federal Reporter and not elsewhere.

Another class of books which is increasing very rapidly is the unofficial reports of selected cases. The first series of annotated reports, "American Decisions", was begun in 1871, and completed in 60 volumes. This was followed by "American Reports", in 100 volumes, and this by "American State Reports", in 140 volumes. Due to their usefulness these annotated reports proved very popular with Bench and Bar. In an advertisement by the publishers it was said "the reports of the court of last resort in each state contain cases of great general importance, but they are buried beneath a mass of practice and local cases of no value outside the jurisdiction in which they were decided. To remedy this evil, by separating that which is important from that which is local, is the object of the Annotated Reports". The Trinity Series, as it is commonly known, was followed by a somewhat similar set of selected reports known as the Lawyers' Reports, Annotated. The "American and English Cases Annotated", and "American Annotated Cases", largely duplicating the Lawyers' Reports, Annotated, were published during the same period from 1911-1918. At present the current set is the American Law Reports, which has reached 79 volumes to date.

There are several distinctive features of the current annotated reports which appeal to the lawyer: First, a careful selection of cases of general interest from all the states; second, the annotations which are published in connection with each case; and third, a summary of the briefs and arguments of counsel.

The most numerous and expensive duplications occur within the class of books of secondary authority, which are:

those that explain and expound the law and those that serve as aids in finding the law; namely, Commentaries and Treatises, Encyclopedias, Dictionaries, Digests, Citators and Legal Periodicals. To illustrate, at present, there are five different series of Digests of the U. S. Supreme Court Reports; namely, "American Digests", "U. S. Supreme Court Reports Digest", "Supreme Court Reporter Digest", "Federal Reporter Digest" and "Rose's Notes". These are certainly duplications that might have been avoided. Again, a Colorado lawyer might have in his office at least seven different printed digests of Colorado Reports; namely, the "Colorado Digest", "American Digest", "Advance Sheets to American Digest", "American Digests Annuals", the "Decennials", "Pacific Reporter Digest", and "Advance Sheets to Pacific Reporter Digest", not to mention the digests in each volume of the Colorado Reports and the Pacific Reporter, and the encyclopedias and text-book digests. This same situation with reference to published digests exists in every State in the Union.

Another division of books which has multiplied until the average law library contains thousands of volumes, is text-books. These are: (1) the treatise or commentary, (2) the text-book digest, (3) the student text, and (4) the local text-book. Only a small number of those of the first division mentioned, the treaty or commentary, have risen to the dignity of primary authority, such as Blackstone's and Kent's "Commentaries", Pomeroy's "Equity Jurisprudence", Dillon's "Municipal Corporations", Wharton's "Criminal Law", etc. Some very excellent and authoritative special treaties of recent years are: Cardoso's "The Nature of the Judicial Process" and "Law and Literature", Carter's "Law, Its Origin, Growth and Function", "Modern Conception of Law", by Judge Frank Johnston, Wigmore's "Principles of Judicial Administration", etc. The local text and the student texts are, of course, special and limited publications. Strangely, the most numerous of this class are the text-book digests. They have no sanction or authority in law, usually consist of hastily written briefs on some one subject or branch of the law, and are out of date almost as soon as they are published. The only reason I can assign for the publication of the numerous text-book digests that flood the markets, is the fact that there are a number

of the larger libraries of unlimited budgets, which buy one or more copies of each and every law book published, and these, together with a very few purchasers among the lawyers, make the undertaking profitable.

Another class of legal literature which is growing in popularity as well as numbers is legal periodicals. It is quite impossible for a library to acquire at this time complete files of all law periodicals. The early numbers of practically all the most popular of these are out of print, and even to acquire all the available copies would be too expensive. Therefore, the average library can carry only a selected number of the leading periodicals, and those of local interest. In the period between 1925 and 1930, over twenty new legal periodicals appeared in the field. There are in all about a hundred law magazines published in the United States. Your Supreme Court Library contains an excellent file of this literature, together with complete indexes to all.

The United States Government is now engaged in the publishing business in a big way. The Printing Department at Washington is the largest establishment of its kind in the world. It would require many days simply to read the list of books, pamphlets and periodicals printed there every year. Of course, only a small part of this matter could be classed as "legal literature". Stored in the basement of our state house here are thousands of volumes of Departmental Reports of the U. S. Government, and also hundreds of bound volumes of Congressional Records. These are shelved in an orderly arrangement, and are available if required. These departmental reports are frequently cited in the opinions of the Supreme Court of the United States and are considered a necessary part of a complete law library.

But there are many government publications which are absolutely necessary to any large law library and which are available in our library in convenient arrangement, as follows:

- U. S. Supreme Court Reports and Advance Parts,
- I. C. C. Reports,
- I. C. C. Valuation Reports,
- Opinions of the Attorney General of the U. S.,
- Court of Claims Reports,
- Decisions of Comptroller General,
- Customs and Patent Appeals Reports,

Federal Anti-Trust Decisions,
 Federal Trade Commission Decisions,
 Public Lands Opinions,
 Commissioner of Patents Decisions,
 Board of Tax Appeals Reports, and
 Treasury Decisions.

Likewise, almost every State in the Union has its own printing establishment, or commission. Colorado is no exception. In addition to the official statutes, journals, reports and municipal ordinances, there are 35 reports of departments of the State, published under the supervision of the Printing Commissioner. This does not include dozens of publications by State institutions and other departments under their own supervision. Of the 35 above mentioned, note the following:

Attorney General Reports,
 Capitol Managers Reports,
 Auditor Reports,
 Dependent Children Reports,
 Barber Examiners Reports,
 Cosmetology Board Reports,
 Board of Pharmacy Reports,
 Coal Mine Inspector Reports,
 Child and Animal Protection Reports, and
 Agricultural Statistics Reports.

I have attempted to show that there are unnecessary duplications of books of certain classes. On the other hand, I suggest three books which are needed by the libraries and should be published: First, a volume similar to the present National Reporter Blue Book, listing in numerical order the Reporter citations and showing the corresponding State Reports citations of each. The present Blue Book, as you know, lists only the State Reports citations in numerical order and shows the corresponding Reporter citation. Therefore, one can, with the use of the Blue Book, easily ascertain the Reporter citation, but if he has only the Reporter, he must refer either to the Digests or to Shepard's Citations in order to get the State Reports citation. Second, a volume containing copies of all the Rules of Courts of Last Resort; and third, a volume containing copies of all the State Constitutions, kept up to date by supplements.

Our own Colorado Supreme Court Library is neither so large nor so valuable as many others throughout the United

States. The total number of volumes is only about 50,000 (counting those in the basement) but it contains all the books which any member of the profession will ordinarily need in his researches.

In the last few years I have had the pleasure of visiting and studying the make-up and administration of several of the largest law libraries in the United States and Europe—libraries which have staffs of employees numbering as many as 300,—including Harvard Law Library, Northwestern University Law Library, University of Illinois Library, New York City Bar Association Library, Law Library of Congress, Bibliotheque Nationale of France at Paris, and the League of Nations Library at Geneva. After visiting those wonderful libraries I can say to you candidly that the Supreme Court Library here in Denver is the cleanest, the most practicable and the most efficient working library with which I am familiar. Your Supreme Court has given much time and effort in making the library as complete as is possible, within the budget allotted for its maintenance, and in making it usable, attractive and convenient for the Colorado Bench and Bar.

In conclusion, I desire to say that I have no formula to propose or campaign to inaugurate for the correction of this growing evil of the bulging law library. I do feel, however, that the constantly growing, expensive and unnecessary multiplicity of books should receive the earnest and careful consideration of the profession. It is a matter which could be very effectively handled by the American Bar Association, with the cooperation of the Judicial and Legislative Departments of Governments.

An Assyrian tablet, dated in the year 2800 B. C., preserved in Constantinople, reads: "Our earth is degenerate in these latter days; there are signs that the world is speedily coming to an end; bribery and corruption are common; children no longer obey their parents; *every man wants to write a book*, and the end of the world is evidently approaching."

The firm of Pershing, Nye, Tallmadge, Bosworth and Dick has been dissolved. James H. Pershing, George L. Nye, Robert G. Bosworth are continuing their partnership under the firm name of "Pershing, Nye, Bosworth & Dick".