

THE RELATION OF THE LIBRARY TO LEGAL EDUCATION*

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Upon examining the now quite considerable body of literature on the subject of legal education, one is struck by the almost total absence of reference to law libraries, to their relationship to the educational problems under consideration, and to the potentialities involved in the much greater use of the law school library as an effective, and, in fact, indispensable, educational device.¹ At least three reasons appear to account for this fact. In some instances the contributor undoubtedly assumes the importance of library facilities and, as he is primarily concerned with some other matter, he gives them no consideration.² By others, the importance of the libraries is more or less fully appreciated, but the belief is entertained that their development and administration present no problems sufficiently serious to warrant separate and more or less continuous consideration.³ In other words, it is assumed that only such administrative details are involved as will take care of themselves if and when the vital educational problems under discussion are satisfactorily

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1. However, the constructive work done by a relatively few interested persons should not be overlooked. They would be the last to deny the truth of the above statement. For example, Dean H. Claude Horack, who has for years been closely identified with the work of the Association of American Law Schools, says: "In the development of legal education for which the Association of American Law Schools has been so largely responsible, the growth in the use of the law library seems to have lagged far behind." Horack, *The Small Law Library and the Librarian* (1937) 30 L. LIB. J. 6.

2. As would be expected, this attitude is usually implicit in the writings of those connected with law schools having more or less adequate libraries. Occasionally this fact is expressly stated, as for example with reference to the Northwestern University Law School. See *infra* note 6.

3. Probably a no more striking example of this attitude could be found than that of the Special Committee on Organization and Program of the Association of American Law Schools which, at the same meeting that another committee was submitting a significant report relating to law school libraries (see 1936 Handbook 135, 332), recommended the discontinuance of the round table on library problems because it was "about played out." And yet, as was pointed out by Dean Horack during the discussion on the recommendation, the need for a round table is not dependent upon the number of persons interested, but upon the importance of the problems under consideration, and the desirability of providing an appropriate forum for informal discussion. However, even if the number of persons

solved.⁴ However, this silence, or lack of concern, may certainly in many instances be ascribed to a third reason, namely, to the fact that the library facilities are regarded as of only minor importance.

It is, therefore, refreshing when one encounters the occasional unqualified statement of some legal educator with respect to the importance of the law school libraries, as, for example, the following made by the President of the Association of American Law Schools in 1927:

"In the examination of law schools, no shortcoming appears more conspicuously and unmistakably than deficiencies in the library. Those accustomed to agreeable facilities for work and reasonably adequate materials for carrying on investigations, as well as the preparation of the day-to-day program, have little conception of the difficulties under which not a few of our fellow teachers labor. Peculiarly unfortunate it is that so many of the law-teaching recruits have to get their early teaching experience in schools with such limited facilities. To a group of law teachers it is superfluous to say that effective law school work cannot be hoped for without a numerous and well-selected lot of books. The Dean who was satisfied with his library containing no other reports but those of his own state, on the ground that all the law had been adequately declared by his Supreme Court, surely must stand alone."⁵

Nor is the following language less emphatic:

"It need not be stated in this connection that a library is the first essential of legal scholarship. A law school simply cannot get along without it. It is the one thing that all people interested in law schools fully agree upon. There is nothing about such an institution which increases in value so rapidly, and which is more enduring. Before it becomes too huge, it ought to be so ordered that it can be available with the least expense."⁶

Interested should the determining factor, the committee's conclusion was apparently unjustified, for in spite of the obvious competition with other round tables scheduled at the same time, 68 persons attended the library round table at this meeting. Nevertheless, it should certainly not be concluded that the members of this committee were unsympathetic to the development of the law school libraries, for several of them had already shown an active interest, and although it recommended the discontinuance of the round table, the Committee as a whole favored the continuance of the Committee on Cooperation with the American Association of Law Libraries. See ASS'N. AM. L. SCHOOLS, HANDBOOK (1936) 38-42, 91, 336; *Proceedings of Round Table on Library Problems, 34th Annual Meeting* (1937) 30 L. LIB J. 1.

4. Albeit in his study published in 1928, Dr. Alfred Z. Reed recognizes the importance of the law libraries, he appears to have labored under this erroneous impression for he says: "Although law books constitute the indispensable tools of legal education, they count for little until placed in competent hands; and a competent faculty will surely provide itself with these tools, up to the limit of the school's financial resources." Reed, *Present Day Law Schools in the United States and Canada* (Bulletin No. 21, Carnegie Foundation for Advancement of Teaching) 110, footnote 1. For a criticism of this view see Hicks, *Law Libraries and Legal Education* (1928) 14A. B. J. 678.

5. Aigler, *Legal Education and the Association of American Law Schools* (1927) 6 AM. LAW S. REV. 59, 62.

6. Northwestern University Law School. Bulletin No. II, *The Law School Development Program* (1929) 20.

While a few have long since recognized the importance of the library,⁷ unfortunately, the assumption of universal agreement contained in the last quotation is not justified by the facts.⁸ However, the two statements, just quoted, if taken together, can undoubtedly be accepted as expressing the views of the best informed. This being the case, it is all the more surprising that such relatively few persons have seriously concerned themselves with this matter. Happily there are now very definite evidences of a growing interest among law school administrators and teachers, as well as among the law librarians themselves. Increased activity on the part of the American Association of Law Libraries⁹ is being constructively supplemented by the Association of American Law Schools, both through the round table discussions inaugurated in 1932,¹⁰ and by the work of its Committee on Cooperation with the American Association of Law Libraries during the last two years.¹¹ It now seems altogether likely that the combined efforts of these two associations will lead to a definite movement of far reaching consequences. Obviously this increasing activity is, among other things, expressing itself through the gradual development of a literature concerned specifically with the relationship of the law library to legal education in general.¹²

Nevertheless, there is as yet nowhere to be found any comprehensive discussion of this subject, nor is there available any serious general consideration of the various factors involved in bringing about such fundamental changes as are implicit in many of the current proposals for the advancement of legal education.¹³ In

7. For example, in the history of the Yale Law Library a definite and unqualified recognition of this fact can be traced back to the year 1845. See HICKS, *THE YALE LAW SCHOOL: THE FOUNDERS AND THE FOUNDERS' COLLECTION* (YALE LAW LIBRARY PUBLICATIONS No. 1, June 1935) p. 31.

8. For example, most unapproved schools do not even claim to have a library. See appendix to report of Special Committee on Non-member schools, ASS'N. AM. L. SCHOOLS, *HANDBOOK* (1936) 285, 292. In other schools the faculties are often quite indifferent. See HORACK, *The Small Library and the Librarian* (1937) 30 L. LIB. J. 6.

9. In 1934 the American Association of Law Libraries adopted a plan for the expansion of its program of activities. See 27 L. LIB. J. 145, 180. For the full text of the plan see 25 L. LIB. J. 177. For the report of the committee for 1933-34, see 27 L. LIB. J. 40. A summary of the activities of the Association will be found in Roalfe, *The Activities and Program of the American Association of Law Libraries* (1936) 29 L. LIB. J. 7. For the latest developments see the Proceedings of the Thirty-second Annual Meeting of the American Association of Law Libraries (1937) 30 L. LIB. J. 261, and Roalfe, *Development of the American Association of Law Libraries Under the Expansion Plan* (1938) 31 L. LIB. J. 111.

10. The addition of a round table on library problems was specifically included in the recommendations of a special committee on round tables. See ASS'N. AM. L. SCHOOLS, *HANDBOOK* (1931) 175, 178. For the adoption of this recommendation see *id.* at 28, 111.

11. See 29 L. LIB. J. 15; ASS'N. AM. L. SCHOOLS, *HANDBOOK* (1935) 144. For the reports of this committee see ASS'N. AM. L. SCHOOLS, *HANDBOOK* (1936) 135, 332, and *HANDBOOK* (1937) 337.

12. The latest contributions will be found in the Proceedings of the Round Table at the 34th Annual Meeting of the Association of American Law Schools (1937) 30 L. LIB. J. 1. For other articles see the Cumulative Index to Vols. 21-29 of the Law Library Journal in Vol. 29. It should of course not be concluded that these problems are peculiar to legal education. In all higher education the need for instruction in the use of library materials is being increasingly felt. See especially the following articles by Peyton Hurt: *The Need of College and University Instruction in Use of the Library* (1934) 4 LIB. Q. 436, and *Bridging the Gulf Between the College Classroom and the Library* (1934) 59 LIB. J. 748.

13. But in dealing with some of the specific factors involved, Professor Hicks has on several occasions clearly indicated the importance of this subject in general. See especially Hicks, *Law Libraries and Legal Education* (1928) 14 A. B. A. J. 678.

this, and the two succeeding articles, therefore, we shall briefly discuss some of these more important factors, in an endeavor to show both their necessary relationship to the contemporary movements in legal education and the important role that the law libraries must play in the future. It is sincerely to be hoped that this discussion will stimulate a much more detailed examination of some of the more vital considerations, here only briefly touched upon, for what is so urgently needed is a far more widespread interest in the development of an adequate law school library service and its integration with the legal educational program.

In a recent issue of the Annual Review of Legal Education, Dean Pound significantly points out that a little more than one hundred years ago Joseph Story summarized the purposes of a law school curriculum as (1) preparation for the effective conduct of litigation, and (2) preparation for public life.¹⁴ Dean Pound then proceeds to state the present situation as follows:

"No such simple statement is possible today. At least seven purposes must be taken into account: (1) The primary purpose of preparing for practice of the profession, not overlooking the diversity of local law and procedure and bearing in mind the manifold activities which practice in the large city of today may involve; (2) to train competent business advisers as to the legal side of business, industrial, and public-service enterprises; (3) to train future judges; (4) to train future legislators; (5) to train future teachers of law and law writers; (6) to train those upon whom the public will rely for sound advice and criticism as to legislation and the legal aspects of political affairs; and (7) to carry on investigations of the problems of legal adjustment of human relations and of how to meet those problems effectively."¹⁵

Obviously the underlying conditions, which are so largely responsible for the great broadening of purposes in legal education as indicated above, have at the same time been producing profound changes in the world of library science. In almost every field and on a nation-wide scale the problem of coping with the ever expanding mass of printed matter has been a serious one. In this respect the law has certainly been no exception for in no area have the shrinking of distances, brought about by improved methods of transportation and communication, the accelerated tempo of modern life and the increasing complexity of human relationships, produced more conspicuous results. Reliance upon precedent has, in the first place, greatly stimulated the production of printed matter, which, once produced, must be made available. In consequence, the law libraries are confronted with the serious problem of meeting the ever increasing needs of their specialized public. For convenience these may for the most part be attributed to the following factors:

1. The notable increase in printed matter in each and every jurisdiction, as one field after another comes within the purview of the law.
2. The growing tendency to consider legal problems from a national and even international point of view, or to study them comparatively.

14. Pound, *Present Tendencies in Legal Education*, AM. BAR ASS'N. ANNUAL REVIEW OF LEGAL EDUCATION FOR 1935, pp. 1, 7.

15. *Id.* at p. 7.

3. The more general realization that law must be considered in its broader social setting.

4. The need for having immediately available full information with respect to contemporary developments, even if this must be supplied in temporary form.

5. The inevitable development of numerous search books, without which the study of law today would be virtually impossible.

6. A constantly increasing volume of printed matter, primarily of a critical, analytical, or historical nature.

7. The necessity of preserving a major portion of these materials because they contain the record of past experiences.

As an inevitable result the expression, "the tools of the profession," which has until comparatively recently referred to a limited number of books, must now be regarded as embracing an almost unlimited number—so many in fact that their convenient utilization is impossible, unless they have first been organized into an effective library service. There has thus been injected into the picture of professional activities and interests, originally quite unobtrusively and largely unnoticed, but now more conspicuously, a virtually new field for specialization, and nothing is becoming more clear and unmistakable than that the legal profession in general cannot be adequately served as long as the role of this special group is regarded as of minor importance. An effective law library service simply cannot be created nor maintained in the absence of an adequate personnel equipped both by training and experience to perform the wide and varied tasks necessarily involved.¹⁶

Legal educators have of course by no means altogether disregarded these changing conditions, nor has the growing importance of the law library been entirely overlooked. Experimentation has been more or less continuous. A few innovations, after their values have been demonstrated, have been adopted elsewhere, and even in general some ground has been gained. For example, today the belief long entertained by a few leaders that an adequate legal education can no longer be obtained in a law office is becoming so widespread that it hardly needs any argument to support it. While there may be a few who still maintain that Mark Hopkins on one end of a log and a student at the other end will suffice,¹⁷ some recognition and appreciation of the other indispensable requirements is now

16. A detailed discussion of what is involved in the creation and maintenance of a law library service will be included in the second article of this series.

17. A somewhat facetious but nonetheless effective statement of this truth is the following: "Mark Hopkins is all right at one end of a corridor, the longer the better, if there is a first-rate laboratory or library at the other end. It's nice to have Mark on call when you want him if he keeps to his hole when you don't; but he is a ghastly bore when he is on hand all the time, and you want a good microscope or some original-source documents oftener than you want Mark. You can frequently substitute for Mark or even do without him; but there is no substitute for libraries and laboratories . . ." DeVoto, *Another Consociate Family* (1936) 172 *Harpers Magazine* 605, 606. Professor Hicks has on several occasions called attention to the increasing inadequacy of the Mark Hopkins ideal as applied to legal education. See especially his article, *Law Libraries and Legal Education* (1928) 14 *A. B. A. J.* 678. Apparently the program of the Yale Law Library takes full account of this fact. See, *YALE LAW LIBRARY MANUAL, THE BUILDING, THE BOOKS AND THEIR AVAILABILITY FOR USE*, (Yale Law Library Publications No. 5, August 1937) p. v. After all, this is nothing more nor less than the modern application of Lord Coke's advice to students of the law that they "seek the fountains."

found even in many of the obviously poorer law schools. Something in the way of plant is provided and certain minimum equipment (the most important element being books) is acknowledged as essential. In every place where formal training, at all worthy of being designated as legal education, is being offered, there will be found at least a few texts, case books, or similar materials, and generally a limited number of volumes of court reports. Lip service,¹⁸ if no more, is being paid to the flattering but doubtful assumption, so popular with after dinner speakers at bar association meetings, that the practice of the law in this country is in the hands of a "learned profession."

But the transfer of the responsibility for legal education from the law office to the law school has not in the past, nor will it in the future, automatically free legal education from the deficiencies increasingly evident in law office training. Unfortunately in some instances notable advances have been neutralized to a considerable extent through the almost complete sacrifice of other values inherent in law office training when at its best. Leaving the use of library materials altogether out of account for the moment, one has merely to call attention to the long uphill struggle of the legal aid movement, so far as the clinic may be regarded as an educational device, to demonstrate how indifference, preoccupation with other disciplines (whose values are not here being called in question), and in some instances even hostility, have together so materially delayed the realization of anything like an ideal legal educational program. As the extent to which these attitudes have prevented training in the use of library materials is a matter with which we are directly or indirectly concerned throughout this paper, it need not be particularly stressed at this time. Our immediate object is rather that of demonstrating that a proper emphasis upon this particular aspect of the lawyers' training will, among other things, contribute to the solution of a number of the problems which are now causing serious concern. Some of the most important of these may be summarized as follows:

1. The growing difficulty of trying to impart to students the expanding mass of important technical information.
2. The continuing failure fully to equip the graduate with even the rudiments of techniques indispensable both in active practice and in other branches of the profession.
3. The increasing necessity to deal effectively with the ever present tendency toward over mechanization in education.
4. The desirability of reducing the conflict between those who insist that the emphasis should be either upon a "practical" or a "theoretical" program of training.

There can be no doubt about the fact that an intelligently utilized library ser-

18. An interesting illustration will be found in the library requirement of the National Association of Law Schools. Although the adoption of such a provision testifies to the fact that the members either recognize the importance of the library or hesitate to be on record to the contrary, the provision is worded so as to avoid all necessity for compliance with the requirements of the only standardizing agencies exerting any appreciable influence. The language throughout is so general in character that effective enforcement would be virtually impossible. See Annual Meeting of the National Association of Law Schools (1937) 8 AM. LAW S. REV. 972, 973.

vice will contribute something of value in meeting each of these difficulties. With respect to the first, it is becoming increasingly clear that the law schools cannot hope to teach everything. Even the addition of a fourth year, although it may have value, will not suffice, for

“...the changes in our law which require a four years course will by the same logic ultimately require a five or six or ten year course. There can be no mechanical solution for a problem which is created by the endeavor to force a continually increasing volume into a fixed space and we are being brought to the realization that we must seek other methods to adapt the law school course to the growing technique of the law.”¹⁹

A fuller realization of the value of equipping law school graduates with a knowledge of how to find and apply such law as is relevant at the moment, notwithstanding the fact that the particular subject matter has not been covered by a formal course, should considerably mitigate the present reluctance to abandon the pursuit of a hopeless ideal.²⁰

And secondly, how can it intelligently be denied that facility in the use of the tools of the profession must be included among the “other methods” suggested by Mr. Justice Stone in the above quotation. Certainly there is a good deal of truth in the statement that “If the student knows a good case when he sees it,—and how to find it,—he will be able to take care of himself anywhere and anywhen.”²¹ Obviously, no such capacity can be developed except through actual practice in the use of the books themselves, in all their wide and complicated variety. Happily, however, the “mechanics” of the art of finding the law cannot be mastered unless there are at the same time developed mental faculties of great value to the lawyer, nor should we overlook the fact that some substantive knowledge is inevitably acquired. Let there be no mistake about the fact that in legal education the library should assume a role not altogether dissimilar to that of the laboratory in the study of the natural sciences. One of the principal differences between the two fields of teaching today is that in the latter disciplines this fact is more generally recognized. Needless to say, in this respect medical education in general is far in advance.

Just as the laboratory has so largely contributed to the diversification and broadening of the teaching program, so in legal education a good library may be utilized to bring about such salutary changes.²² Lectures, class discussions, case book study, can be supplemented by the generous use of library materials, to the end that the present rigidity of the curriculum and the over mechanization of so much in legal education may at least in part be avoided. The limitations here will

19. Stone, *The Future of Legal Education* (1924) 5 AM. LAW S. REV. 329, 332.

20. Obviously one of the present obstacles is the attitude of some boards of bar examiners. Until questions are framed so as to determine “capacity” rather than detailed knowledge of subject matter, students will feel impelled to demand courses on every subject. Fortunately, however, in a few states the importance of capacity in finding the law is gaining recognition.

21. Darby, *Criticism of Our Law Schools* (1917) 12 ILL. L. REV. 342, 352.

22. In this connection it is interesting to note that in teaching introductory science many institutions are to some extent shifting the emphasis from the laboratory to the library. See Reeves and Russell, *The Relation of the College Library to Recent Movements in Higher Education* (1931) 1 LIB. Q. 57, esp. 61.

be largely determined by the interest of the law school teachers themselves and by the time at their disposal for experimentation with new teaching methods and for individualized instruction.

No doubt there always will be differences of opinion between those who see the greater value either in a predominantly practical or a predominantly theoretical education. Fortunately, it is neither necessary nor desirable to effect a complete reconciliation between these divergent points of view. Far different, however, should be the situation with respect to fundamentals, particularly when these are obviously common to both conceptions of what is the best legal education. If familiarity with the numerous devices, which alone give access to the printed record of the law is not such a fundamental, it is hard to imagine anything which may be so regarded.²³ Because this fact by no means has been fully realized Mr. Darby's sweeping indictment of the law schools made in 1917, not only was then, but unfortunately still is in large measure, justified.²⁴ In this instance the usual defense that the law schools cannot be expected completely to train the lawyer is not available, for this is one of the techniques with which the law schools are or should be peculiarly qualified to equip their graduates.²⁵

As has heretofore been stated, legal education has not by any means remained stationary with respect to this matter. In a few schools the curriculum has more or less adequately recognized the importance of training in the use of law books, while in somewhat larger number such opportunities have been provided for at least a portion of the student body. However, in few if any of the law schools has there been anything like a complete integration of this essential discipline with the other aspects of the educational program, to the end that a due amount of training shall be provided throughout the entire three year course.

Inasmuch as the case book method of instruction has presented perhaps the chief obstacle to a modification of teaching methods we can hardly proceed intelligently without pointing out its close relationship to the problems with which we are concerned. Probably no one will deny that the development of the case book system has been a momentous event in the history of legal education, nor will there be many who would advocate the abolition of the case book as a teaching tool. Certainly no law school librarian is blind to its merits, both as a substitute for the expensive and altogether impractical duplication of the law reports that would

23. One lawyer has asserted that "three-fifths of the lawyer's workday is devoted to 'finding the law'." See Darby, *A Criticism of Our Law Schools* (1917) 12 ILL. L. REV. 342. While this proportion is undoubtedly too high for the rank and file of lawyers, it does indicate its importance in the workday of the thorough practitioner, particularly in the metropolitan areas.

24. *Id.* While undoubtedly considerable progress has been made since this article appeared, particularly in the teaching of formal courses in legal bibliography, a large proportion of the law school graduates is still entirely innocent of any thorough grounding in the use of law books. See *infra* p. 151.

25. In this connection the following statement of John Hanna is of interest: "From a professional viewpoint the law school tries to bridge the gap between college and law office. No one expects the law school completely to train the lawyer. It gives him a technique, and a certain familiarity with his future materials. The rest of the training he must give himself over many years" Hanna, *The Law School as a Function of the University* (1932) 10 N. C. L. REV. 117, 149-150.

otherwise be necessary, and because its use has greatly reduced the wear and tear on expensive sets of books, which, in some instances cannot be replaced at any price. However, the fact remains that while the utilization of the case book has been distinctly broadening in some respects, in others no such salutary effect has resulted. Nor does the inclusion of materials other than decisions of the courts in any way reduce the evil effects resulting from its exclusive use. In short, to the extent that the case book continues to blind law teachers to the necessity of supplementing this method of instruction by actual practice in the use of the original materials themselves, there is the greatest danger that these advantages are being bought at too great a price. Some of the more recent experiments with new teaching techniques appear to indicate, among other things, that this fact is gaining recognition.²⁶

Unquestionably conditions are radically wrong in the law schools where the libraries are merely convenient places in which students may read their case books rather than "extremely important teaching aids". Under such a pedagogical system nothing is more probable than that the student will become "case book bound", a condition bearing marked similarities to that of a plant when too long maintained in a pot inadequate in size to permit its normal growth. Inevitably the root system develops in a series of ingrowing circles and eventually adaptation to a larger environment may become extremely difficult, if not impossible, and the plant will languish although in the very presence of the abundant opportunities offered by the natural environment. Similarly the day may come when the student will adapt himself only with the greatest difficulty to the necessities of active practice, so far as the use of law books is concerned, and in some instances he may fail to do so altogether. The brilliant case book student may become a failure as a lawyer, for notwithstanding the fact that independent *thinking* may have been stimulated, personal initiative and self-confidence have been discouraged from the beginning. He has been "spoon-fed" by the professors. Their favorite case books have been supplemented only by definitely circumscribed lectures and classroom discussion. In other words, his development has been too carefully directed at every step. It hardly seems necessary to point out that specific references for parallel reading do little to alleviate this narrowing effect. Assuming the student actually does the reading suggested, he merely goes to the library, takes a specific volume from the shelves and turns to the page or pages indicated. If any difficulty is involved it is more than likely that he will rely upon the aid of an attendant. From this point forward the assignment may be, and no doubt usually is, helpful, but certainly all these preliminary steps have been largely mechanical. Instead of learning how to find the information with which he may solve legal problems he has been learning how to do the professor's bidding.

Thus the case book, in spite of the great contribution it has made to classroom instruction, and notwithstanding its superiority to the student text, has left much to be desired. Its obvious effectiveness for certain purposes lays its use open to

26. For discussion of some recent trends in legal education, see Garrison, *Developments in Legal Education at Michigan, Illinois, Chicago, Northwestern, Minnesota, and Wisconsin*, A.M. BAR ASS'N., ANNUAL REVIEW OF LEGAL EDUCATION FOR 1936, p. 18.

criticism from other points of view.²⁷ Except to the extent that it has preserved the library books from wear and tear and the staff from extra work, the case book has rendered the library as a legal educational device a distinct disservice. The limitations of the case book method of instruction have perhaps nowhere been as clearly set forth as in the following language:

"But observe that the case method does not take the student into the promised land of the law. Indeed, he is shown only 'moving pictures' of selected portions of it—and leaves school without even a road-map! In other words, he does not go to the law; carefully selected specimens of it are given to him for analysis. Of course, this is as it should be. But the point is that the case method is not a panacea. It should constitute a *part of a system* of legal instruction. Any pretension that by its use alone students can be prepared for the practice of the law is demonstrably unsound. The case method trains 'the student in legal thinking and in legal reasoning.' A small fund of positive knowledge is a by-product of the method. It is quite obvious, however, that unless the case method is supplemented by other instruction, the pupil will leave as ignorant of *how to find the law* as he was unskilled in legal ratiocination when he matriculated. Of the location and means of access to and through the highways, byways, alleys, crooks, and crannies of the vast domain of American and English case-law, the case method gives no information whatsoever."²⁸

Obviously as great if not greater limitations are imposed by the use of lectures, classroom discussion, and in fact every teaching method, to the extent to which it prevents a reasonable amount of practice in the use of the library materials themselves. And too much emphasis cannot be placed upon the fact that facility in this respect is becoming increasingly imperative as the "vast domain" of American and English law expands. Unquestionably legal education has not kept pace with fundamental changes so far as they are reflected in the greatly increasing production and accumulation of law books.

In view of this fact, is it not clear that any teaching method which will promote a more rounded development of the law student should receive serious consideration? Undoubtedly this is so. Let us, therefore, now turn our attention to an examination of some of these methods, for the most part not new, in order that we may indicate how they may serve more fully the purposes of legal education, without at the same time involving any great sacrifice of other values.

As would be expected, the addition to the curriculum of a specific course designed to impart such knowledge was one concrete result of the growing realization that something should be done. Having once been introduced the course in legal bibliography gradually found its way into the regular teaching program of a number of the schools. To the law book publishers, however, must go the credit for first having recognized its importance, and the informal instruction offered

27. The same criticisms are of course applicable to such compilations as the *SELECTED READINGS ON CONTRACTS*, and the *SELECTED ESSAYS ON CONSTITUTIONAL LAW*.

28. See *supra* note 21, p. 348.

by them has helped pave the way for the introduction of more adequate methods of training.

But a position of respectability for the course in legal bibliography has by no means been achieved as yet. Not only is it still sometimes given "not for credit" from which the students draw the perfectly obvious conclusion that it is relatively unimportant, but all too frequently it is assigned to the youngest member of the faculty, to the latest addition, or, what is far worse, it is imposed upon an unwilling instructor, who in consequence gives grudgingly of his time, either because he is otherwise fully occupied or because he is not interested and indeed occasionally because he resents having imposed upon him a chore beneath his dignity.²⁹ Instructors selected for such irrelevant reasons and harboring such attitudes can hardly be expected to achieve satisfactory results, and it is perhaps largely for these reasons that lectures and classroom discussion are sometimes stressed at the expense of the more time consuming type of instruction based upon actual work in the library.

But the formal course in legal bibliography is not only failing to meet the needs today because it is frequently ineffectively presented, but also because a substantial proportion of law school graduates have attended institutions where no such instruction is offered. Even a number of the eighty-four law schools that are members of the Association of American Law Schools, including not only some of the schools with a large enrollment of students but several of the so-called better schools, do not offer such courses. It is also not uncommon to combine the teaching of legal bibliography with other instruction under circumstances which would appear to preclude all possibility of adequate treatment.³⁰ With respect to the ninety-six non-Association law schools, it can with perfect safety be concluded that such instruction is for the most part totally lacking or hopelessly deficient since in virtually all, if not in all of them, libraries are either conspicuous by their absence or manifestly inadequate.³¹

Obviously, then, even to the extent to which we may rely upon the formal course in legal bibliography to bring about the desired results, much remains to be done. But however desirable it may be to urge the wider adoption of such instruction we should not lose sight of the danger that many will assume that this will, in and of itself, dispose of the problem. Nothing could be further from the truth, first, because there is no probability that a sufficient amount of the student's time will be allotted to such a course,³² and, second, because better results can be

29. Several instances have come to the writer's attention where the instructor frankly admitted that he did the very least that was required to "get by" with the course.

30. While the statements relating to the teaching of legal bibliography appearing in the law school bulletins are not always sufficiently clear to justify the assignment of a specific school to a particular category, they undoubtedly support the general conclusions above set forth.

31. See Report of Committee on non-member schools. ASS'N. AM. L. SCHOOLS, HANDBOOK (1936) 285, esp. appendix p. 292.

32. An examination of the bulletins of the schools that are members of the Association of American Law Schools reveals that in a majority of the schools where legal bibliography is taught the course is confined to one semester hour and in only three schools does it extend beyond two semester hours.

achieved by more or less continuous training throughout the three years rather than through concentration at one particular time. The formal course cannot and should not be expected to serve as more than an introduction to the subject. It should therefore be offered in the first year, and for the specific purpose of equipping the student to undertake independent research work in connection with other aspects of the instructional program. Obviously, any of a number of methods may be utilized to achieve this end. Uniformity of method is not essential, either as between law schools, or with respect to the students in a particular school. Nor is there any need for shifting the emphasis in all courses. Indeed such an over-emphasis would be as subject to criticism as the endless analysis of cases which many students have resented so heartily.³³ No such sacrifice of other values is required.

But, as has been indicated above, the formal course in legal bibliography not only does not provide the complete solution to the problem, it is as a matter of fact not the first effective device employed for the purpose of giving students practice in the use of the original library materials. Long before it was projected some students frequented the library and poured over books, and no doubt occasionally this involved something more than the largely mechanical process of securing the cases and articles assigned by the instructors. Let us now undertake a brief examination of several of the more specific helpful devices which are at present being utilized in order thereby to suggest some of the ways in which the formal course in legal bibliography may be effectively supplemented.

From among these we may certainly single out the law reviews for first consideration. Both in the past and in the present they have contributed materially to the training of such students as have participated in their publication—so much so, indeed, that it is a commonplace both in the law schools and among practitioners that the law review man is especially qualified to do effective work. No doubt, he is frequently one of the better students, but it hardly can be denied that his specific training has been helpful in converting potentialities into present capacity. Although he may still have much to learn, his basic training has been such that he may make himself almost immediately effective. While facility in finding the law in the books is but one aspect of his equipment, this has been acquired, as it should be, along with and because necessary to the solution of actual legal problems.

Were it not for the fact that law review work is available only to the select few—too frequently those who perhaps need it the least—many of the criticisms contained in this article would require considerable modification. Unfortunately, even in the schools which publish reviews, the majority of students are not affected. Therefore, even in these schools, some adequate provision should be made for the remainder of the student body, and in the other law schools some alternative plan should be adopted.

The task of devising ways and means of achieving such desirable ends is not primarily a library problem; it is a teaching problem, for the solution of which the entire faculty should feel the responsibility. Much can be done by the further

³³ Although Langdell contended that "all the available materials" were contained in "printed books", which is certainly not true, he actually much further restricted his interest by his preoccupation with case law. In this connection see Yntema, *The Purview of Research in the Administration of Justice* (1931) 16 IOWA L. REV. 337, esp. 351.

development of a number of more or less successful methods already in use. Instruction in briefing or legal writing of any kind may, and usually does involve some practice in finding the law. Obviously any courses designed to provide training similar to that obtained in law review work will be helpful, as for example, courses concerned with the study of contemporary decisions for the purpose of preparing case notes and comments, although not for publication; individualized research work in connection with some formal course or entirely independent thereof; and the wider utilization of the so-called honors courses. Excellent training may also be provided in connection with moot court practice and work in a legal aid clinic. Needless to say, students who have the opportunity to work directly for faculty members, may, if their tasks are not of a purely routine nature, acquire considerable facility in legal research. Much here depends upon the attitude of the faculty member, as well as upon the time that he may have available for guidance. From among these and other suitable devices, every law school should make such a selection as to insure to every student, not only an early introduction to legal research but a thorough grounding before he leaves the law school.³⁴ However unjustified some criticisms leveled at legal education may be, there is no valid answer to the one contained in the following language except an actual demonstration on the part of law school graduates that it is no longer applicable.

“After such work, lectures would be superfluous; or, if given, they should be understood. And the graduate would have learned not only to know a good case, but how to find it. Going from law school to law office would not be like translation into a totally different world—a world where the sphinx puts many riddles, the answers to which are locked in the cases—the whereabouts of which are unknown! Multigraph copies of professorial lectures on contracts, torts, crimes, carefully-preserved notes, law magazine articles, and other evidences of unpreparedness (which every graduate brings with him) would not then move docket-clerks and office-boys to laughter. The wealth of American and English case-law would be at his command. And in the law office the graduate would continue to do with ease what the student had been doing at school.

“Promotion of legal science is the great duty and privilege of the professor of law; but since the law schools are resorted to mainly by young men who wish to be prepared for the *practice* of the law, we may rightfully demand due consideration for the needs of the ordinary lawyer.”³⁵

In the foregoing discussion we have concerned ourselves almost exclusively with the relationship of the library to the formal teaching program. This, however, by no means exhausts the possibilities for the utilization of the library as a

34. The importance of imparting this instruction in law school is brought home to everyone who is connected with a library that serves members of the legal profession. If this facility was readily “picked up” in practice there would not be so many lawyers who do not know how to use library materials. For a lawyer’s confirmation of this statement see *supra* note 21 p. 348-349. See also Foot, *The Need for College Instruction in the Use of Law Books* (1917) 10 L. LIB. J. 25.

35. See *supra* note 21 p. 353.

constructive factor. Its resources are, or should be, such that its service may also supplement all methods of formal instruction. The mere presence of a wide selection of books provides opportunities for stimulating a broader type of reading and study on the part of both students and faculty members, and the law library may carve out for itself a quite distinct field for service without in any sense infringing upon the domains of other libraries in the community. Surely the law schools should encourage independent reading, and if the ideal of a legal profession composed of "educated" persons is ever to be achieved, lawyers must cultivate a taste for legal biography,³⁶ for legal fiction, for general legal works, for legal history, for jurisprudence, for books in the social sciences, in other words for books which although not "tools of the profession" in the narrower sense of the word, are indispensable to the development of that background which every professional man should have.

While the failure fully to develop this aspect of the law school library's service is no doubt in part due to the fact that it is not always clearly recognized, and in part to the inadequacy of funds for the purchase of books in these classes, other claims upon the time of both students and faculty members present the most serious obstacle. This is indeed a problem for which no solution seems to be readily available. Notwithstanding this fact, every practical effort should be made to so expand our law school library services for they thus may be most effectively utilized, as more or less neutral, but by no means passive influences in the further development of legal education and of the legal profession as a whole.

There now remains but one matter requiring our attention, namely, legal research, the responsibility for which is being assumed by an increasing number of the better law schools. In fact even Mr. Darby, who was viewing the law school primarily from the practitioner's point of view, acknowledged, in the statement just quoted, that the promotion of legal science is the great duty and privilege of the professor of law. Indeed both the bar³⁷ and the public at large are more and more looking to the law schools for effective collaboration, and in fact for actual leadership in dealing with many problems where highly specialized training or a thorough knowledge of some special technical field is essential, and in most instances such collaboration involves legal research either past or present.

However, legal research in the law schools is by no means confined to that involving direct collaboration with members of the bench and bar and public officials. Such an emphasis is in fact for the most part rather recent. Traditionally the law school professor has concerned himself either with the study of legal problems in a much wider perspective or with questions of a quite narrow technical nature, in both instances leaving to the future and to others their direct application to life. Obviously, most of this work eventuates in written contributions, whether reports, articles, or books. In consequence, in America a very substantial proportion of all

36. See Falknor, *The Function of the Law School Librarian* (1937) 30 L. LIB. J. 13, esp. 14.

37. See Rogers, *The Dream of a Real Legal Profession for America*, ASS'N. AM. L. SCHOOLS, HANDBOOK (1934) 106, esp. 111; 21 A. B. A. J. 141, esp. 143; 8 AM. LAW S. REV. 147, esp. 150.

critical writing is of academic origin. Needless to say, every present indication is to the effect that this emphasis will continue and that a large number of law schools will, although to varying degrees, combine legal education and legal research in working out their comprehensive programs of service. While such research activities may not affect the students directly, the whole teaching program is inevitably colored by faculty participation.

No law school can assume the responsibility for legal research without focusing attention upon its library. Obviously, most of the materials required for teaching (except duplications) are essential. However, there will be felt immediately a further need for more extensive library resources and all items in particular fields may become indispensable. Without them research may be difficult if not impossible, but this fact is by no means always fully recognized. Perhaps no clearer demonstration could be found than the establishment of the ill-fated Institute of Law at a university not already possessed of a comprehensive legal collection. Of course the proximity of Johns Hopkins University to Washington, D. C. was a factor of considerable importance, but as any informed person knows, effective research work cannot be done unless the great mass of needed materials is immediately at hand. Apparently those responsible for launching this ambitious enterprise, either did not appreciate the indispensable nature of a library service, or they failed to recognize the fact that both time and almost unlimited funds would be necessary to assemble a collection and create a library service such as would be required.³⁸

From the foregoing discussion it should be perfectly clear that "every tendency in legal education today emphasizes the need for more books."³⁹ While the increasing importance of legal research is, in the first place, a result of these very tendencies, it in turn and on its own account reinforces the already pressing demands for library materials arising from the changing educational program. As an inevitable consequence the library must assume a position of increasing importance. But nothing is further from the truth than the assumption that this fundamental change involves any diminution in the importance of the role of the faculty. Some changes in method are of course involved and those whose ideas with respect to legal education have crystallized will no doubt be disturbed. However, their vested interests will not be encroached upon. For the most part, more, not less, will be required of the faculty. Therefore, those who are now taking such an active interest in devising more effective methods of instruction should not overlook this important aspect of their problem. The development of an adequate library service under competent supervision will of course relieve the faculty of certain responsibilities with which they should not be burdened, but it is the fundamental thesis of this article that only through wholehearted cooperation between a competent library staff, whether it consists of one person or a dozen or more, and a genuinely interested faculty, can the training provided for every law student be made adequate.

38. Of course those who were selected to carry out the work of the Institute may not have shared such a lack of appreciation of library materials.

39. YALE LAW LIBRARY MANUAL, THE BUILDING, THE BOOKS, AND THEIR AVAILABILITY FOR USE (Yale Law Library Publications No. 5, August 1937) p. v.