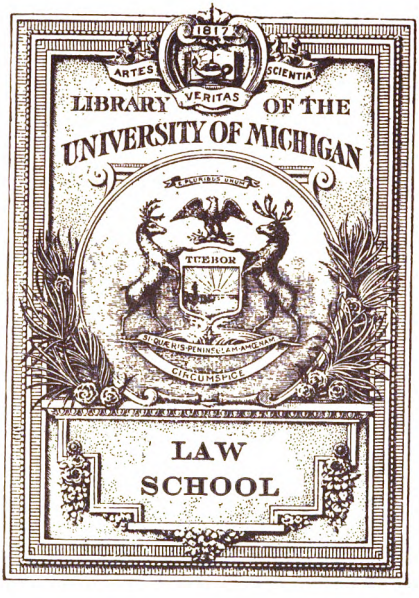

The Teaching of Legal Bibliography

By
Frederick C. Hicks, A. M., LL. B.
Law Librarian, Columbia University

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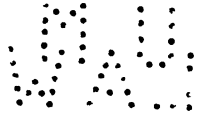


THE
TEACHING OF LEGAL BIBLIOGRAPHY

BY FREDERICK C. HICKS
LAW LIBRARIAN, COLUMBIA UNIVERSITY

In the history of legal education the study of legal bibliography and the use of law books is more ancient than formal teaching of the subject. Since the days when precedent was first firmly seated on the throne of English law, lawyers have bowed down to it, and wise men have admonished the tyro to seek knowledge in the books wherein are set down a multitude of isolated instances of authoritative rulings of the courts. Less homage has been paid to those commands of governments which appear in the form of statutes; altho their superiority over all but a few of the classical treatises is invariably pointed out. A long line of writers beginning with Fulbeck in 1599, and including Coke, Doderidge, Sir Matthew Hale, Phillips and Roger North, have told the student how, when, where, by what method and in what books to seek knowledge. Much that they have said may, however, be summed up in the advice of my Lord Coke to "seek the fountains." But in his day those fountains were few in number and easily recognized. It was at least a reasonable proposal to send the student to a group of books which with diligence might be read thru in a life-time. The identical books referred to were also those which would be relied on in practise. It was humanly possible to become as familiar with them as with a well-thumbed textbook. The study of legal bibliography as such did not need to be separated from the study of the law; for unconsciously every apprentice made his own study and found his own habitual avenue of approach to the fountains.

Precedent still is enthroned, and petere fontes is still good advice, but the fountains have been submerged in an ocean of books. Chart and compass are needed to guide one over the trackless waters to the well-springs now more or less obscured. In phrases now almost stereotyped modern writers complain of

the great increase in the number of law books, especially reports. It was the difficulty of providing a sufficient number of copies of these reports to enable students to read the precedents in their original form that led to the compilation of "case-books." While these selections of cases reprinted to serve as the basis of instruction enabled the so-called case method to reach its present place of pre-eminence in legal education, they do not lead the student to an intimacy with the vast literature with which on graduation he is presumed to be familiar. Even with the case method, it is entirely possible for the honor graduate to be completely at a loss when called upon to find the evidence of the simplest legal truths if it is not contained in the identical books which he has studied. He may be ignorant of the fact that, vast as is the literature which fills our law libraries, it is more minutely indexed than any other literature of like proportions. The needs of the practitioner have been met by the enterprise of the indexer, the compiler, and the publisher; but the student struggling to master the contents of the few books may pass by the guide posts to the many. He must return to them sooner or later in order to reach the right road, and this he does either at the expense of himself, his employer, or his clients. Lawyers in active practise, even of long standing, either admit that they do not know easily how to extract information from their books, or bewail the fact that they did not learn it earlier in their careers. Law teachers also have said repeatedly in print and from the platform that a knowledge of legal bibliography is an essential part of the education of a lawyer. It is an obvious corollary of King George the Third's reputed remark that lawyers do not know so much more law than other people, but they know better where to find it. And yet the history of the teaching of this subject in law schools is not two decades old. Indeed, the schools as such can not lay claim to the credit of having recognized the need and acted on it promptly. The initiative came from without, and the idea that the subject is one for which a place should be made in the curriculum is not yet generally accepted. Of the 117 law schools in the United States, less than half have provided such instruction, and the science of teaching the subject is still in its infancy. Before pointing out in detail some of the unsolved questions involved in

formal teaching of legal bibliography, it may, therefore, be helpful to review the history of its entrance into our schools. By this method something may be learned from the logic of events.

THE WORK OF THE PUBLISHING HOUSES

Whether we attribute the action of the publishers to well-considered commercialism or to some higher motive, the credit of arousing interest in law books as a study must be given to them. They were the pioneers in a work, begun with enterprise and foresight, at considerable expense, and still carried on with intelligent persistence. Moreover, they have taught not only several thousands of students, but by example and precept a number of instructors. Two publishing houses, the West Publishing Company, and the Lawyers' Co-operative Publishing Company, are today employing representatives to visit law schools, and when permitted to deliver lectures on the use of law books. The former was the first in the field and has the longer record of service.

The active work of the West Publishing Company in this connection was entrusted to three men who jointly are responsible for initiating and developing the plans. They are Alfred F. Mason, C. Willard Smith, and Roger W. Cooley. The first step was the publication in October, 1902, of the first number of the American Law School Review, a periodical by means of which a direct appeal could be made to the law schools of the country. In the third and fourth numbers appeared articles on Instruction in Finding Cases and on The Use of Law Books. Then in the Winter of 1904 was announced a Case Finding Contest offering $200 in prizes to those students who submitted correct lists of citations showing where ten cases, of which the facts only were given, are to be found in the law reports. The names of the winners and the correct answers were printed in the Spring number, 1904. Other contests known as Brief-making Contests were held in 1905 and 1906, a winning brief being published in the Spring number, 1907. It is significant that in the initial contest most of the prizes went to students of Northwestern University, that school being then almost alone in teaching the use of law books, whereas in the later contests the winners ranged all the way from Stanford to Columbia and from St. Paul to Pittsburgh. It was evident that law teachers and students were thinking about the advantages of systematic instruction in the use of books, and that

the argument had been driven home that a brief can not be written until the authorities have been collected and digested. Advantage was taken of these facts by the publication in 1906 of the first edition of Brief-Making and the Use of Law Books, edited by Professor Nathan Abbott, then Dean of the Leland Stanford University Law School; and by visits to a number of law schools for the purpose of arranging for lectures to be given by a representative of the company. In preparation for the lectures, Mr. Cooley and Mr. Smith, field agents of the sales department, applied themselves to devising some easy means of finding cases, with the result that the "descriptive word" method was formulated. During the winter of 1906–1907, Mr. Cooley visited Wisconsin, Minnesota, Northwestern, Michigan, and Chicago Universities, and the Detroit Law School, lecturing and conferring with students and instructors. The experiment was so successful that Mr. Mason began an active campaign to interest practically all the law schools of the country, and in the fall and winter of 1907–1908, Mr. Cooley lectured at twenty law schools. From 1906–1911, the work grew until in 1911 when Mr. Cooley retired from the company to become Professor of Law at the University of North Dakota, he was regularly visiting thirty schools, devoting seven months of each year to the trips. In all he had lectured at thirty-seven different schools.

In the meantime, in 1909, a second edition of Brief-Making, edited by Mr. Cooley, had been published; and a new project had been started. This was the establishment early in 1910 of a Practitioners' Correspondence Course in Brief-Making for the benefit of young lawyers and law students not attending law schools. The basis of the course was the second edition of Brief-Making, but in the preparation of the lesson sheets and quizzes, the whole subject was gone over anew by Mr. Cooley. The cost of tuition was $10. Nearly 300 students enrolled, and actual work was begun; but as its successful continuance would involve a large expenditure of money, the course was soon abandoned. A desirable result of the attempt was, however, the publication of the third edition of Brief-Making, which was issued in 1914.

Mr. Cooley's successor as traveling lecturer was Mr. Raleigh A. Daly, of the Chicago bar, who has since 1911 widened the field of operation so that in the winter of 1915–1916, he visited seventy-one schools and lectured at fifty-six. During the academic year

1916–1917, his schedule called for visits to seventy-five schools, with lectures at sixty. Since 1913 the company has promoted the establishment of local courses as a part of the regular curriculum. At that time the number of men properly qualified to teach the subject was limited. The problem, therefore, was to recruit a group of men willing to apply themselves to a new subject not yet formally recognized by law schools. This end was sought by two means. In the summer of 1913 the company invited twelve law schools in the South to send representatives to its offices in St. Paul for the purpose of receiving special instruction in the use of its publications. The schools which sent representatives were: Tulane University, the University of Texas, the University of Florida, John B. Stetson University, University of South Carolina, University of Oklahoma, University of Kentucky, University of Tennessee, Atlanta Law School, University of Mississippi, and the University of Denver. The conference resulted in the establishment of courses in most of these schools. The other means employed was the reverse of that just mentioned. A representative was sent to spend several months in the law schools of the Southern states to assist in qualifying local instructors for the work. This enterprise was entrusted to Mr. Charles L. Ames who introduced experimental courses, many of which became permanent.

The other large publishing house which is now arousing interest in the use of law books is the Lawyers' Co-operative Publishing Company. It has only recently entered this particular field, but now has a special representative, Mr. F. S. Schoonover, who devotes his energies to work with the law schools. During the last winter he has visited almost all schools east of the Rocky Mountains, lecturing in seventy of them.

THE WORK OF THE SCHOOLS

The number of law schools giving definite instruction in this subject by resident teachers is gradually increasing. During the last year information concerning the courses in twenty-nine schools has been compiled by a committee of the American Association of Law Libraries. In a few of these, lectures are still given by representatives of the publishing houses in addition to those provided by the schools. Aside from the mere fact that the schools are taking up the work, the most significant point notice-

able is that methods have not been standardized, and that each school is solving its own problem on the basis of local expediency. The time when the courses are given, and the method, means, form, and status of the instruction show no uniformity. Instruction under the auspices of the schools is intrinsically more useful than that given by publishing houses. The latter frankly admit that their primary object is to call attention to their own publications. Their lectures lack a scientific basis and are limited in scope. The permanent local instructor on the contrary has the opportunity of presenting his subject in an unprejudiced way, comparing and evaluating the publications of different houses. The courses can be longer, with opportunity for discussion and practise, and attention can be paid to the needs of the individual student.

Assuming, therefore, that eventually legal bibliography will be taught in a formal way in all recognized law schools, it may be worth while to state some of the questions which men now working independently might discuss for their mutual advantage. These questions roughly group themselves in two over-lapping divisions, viz., Administration and Problems of Teaching.

ADMINISTRATIVE PROBLEMS

The moment that the decision is made to elevate the subject into a formal part of the curriculum, the Dean of a law school is confronted with the problem of finding a place for it in the curriculum. In a three-year course, eight months to the year, with twenty-four required subjects, and ten others either given in alternate years, or as electives, with moot courts clamoring for fuller recognition and new courses proposed, where can a place be found for so humble a subject as legal bibliography? And then, before this question can be answered come the definite queries, In what year shall it be given? Shall it be given in a continuous course or in two parts? Shall it be taught as a separate subject or in connection with another? How many hours shall be devoted to it? Shall it be required or elective, and in either case shall credit be given?

On all of these points the testimony of students and recent graduates should have some weight. In many schools where such a course is offered as an elective without credit, students voluntarily add it to their regular work, because the knowledge gain-

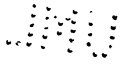
ed can be put to immediate use and has a definite marketable value in law offices where clerk-ships are sought. They express the opinion that the instruction should be given in any case, whether at the expense of more hours' work, or as a substitute for one or more of the special courses for which credit is now given. As to the year when the instruction should be offered, there is a difference of opinion, depending on the scope of the particular course with which they are familiar. All agree that certain phases of the subject ought to be presented in the first year, or as soon as the student is expected to get beyond the covers of his case-books. Others feel that there are two distinct portions of the subject, and that the more advanced part should be given in the second or third year, when it could be joined to instruction in brief making or court practise. In nineteen of the twenty-nine schools of which the writer has a record, the course is offered to first year men only, in four, to second year men only, in four to third year men, and in two to the whole school. Students seem to be quite indifferent to the question whether credit should be received, but in general agreement that the course should be required. This is on the ground that the new student may overlook a subject for which no credit is given and which has no prominent place in the schedule, thus omitting something which will be of use to him in his preparatory study and in his early practise. They say also that unless it is required, the tendency is to make no place for it in the schedule, thus causing conflicts and preventing many students from taking the course. They are willing to give as many hours to the course as the instructor will offer, and in schools where the work is optional some students take it a second time in order to tighten their grasp upon it. In our law schools, the practise varies so much as to the number of hours offered that little can be learned from the figures. The range is from three to thirty-six hours, the largest number offering fifteen hours. In twenty-one schools the course is required, and credit given.

These are a few of the problems that confront the administrator. Obviously they can not be solved in a particular school without reference to other questions. Fundamental among these are, What shall be taught, Who shall teach it, and What methods shall be used?

PROBLEMS OF TEACHING

There are at least three divisions of the subject which we have spoken of as legal bibliography. They are, first, legal bibliography proper, which deals with the repositories of the law; second, methods of finding this law, which is an art to be acquired; and, third, brief-making, which has to do with the orderly presentation of arguments based on authorities, and in conformity with the rules of the court to which they are addrest. Legal bibliography proper is not merely a description of books. It is also a study of the record of the jural life of a people. This record shows the evolution of law and the civilization back of it. Its very language, diction and style are products of contemporary literary taste; while the evolution of printing, binding, and bookmaking can be traced in the history of law books. Decisions never become obsolete merely from the passage of time. On the contrary many of them gather weight with age; and, therefore, the study of the history of law books is not merely fanciful or recondite. The modern lawyer can not rely on modern books alone. In fact, a knowledge of the history of the great classes of law books is necessary in order to select the authorities on which to rely. Legal bibliography proper should, therefore, be presented as a historical subject by means of which a background is given to the modern picture. In days when business methods are making it difficult for the law to maintain its position as a profession, no better means of instilling respect for the law into the minds of students can be found than by teaching the history, authority, and usefulness of its vast literature. For these reasons it seems advisable to teach this part of the subject in the first year of the law course.

The second part of the subject is the one which makes the most direct practical appeal to the student. As soon as a case or statute is cited to him in class, he finds himself face to face with an elaborate system of reference which is new to him. Only the exceptional student masters this unaided in time to be of service to him in his early researches. And even he acquires it in an unsystematic way, and without certain knowledge of the reference books which will help him in case of doubt. It is a mistake to speak of any of the processes of finding the law as mechanical processes, for one has not truly found the law until one



understands it, and this requires a knowledge of substantive law which comes only with the passage of time and much experience. Nevertheless, there is a species of manual training in the use of law books and libraries which should be learned before or coincidently with the substance of law itself. This has been defined as the art of finding known cases and statutes, and includes the use of catalogs, the arrangement of libraries, the interpretation of citations, their translation from one form to another, the location of cases when only their titles are known, the tracing of the legislative and judicial history of statutes and the judicial history of cases. Every practical consideration demands that an opportunity to acquire such knowledge be given the student at the beginning of his course. He has less need of finding unknown cases and statutes until a later period. He has neither the occasion, the time, nor the technical equipment to find the whole law applicable to a state of facts until after the intensive study of the fundamental doctrines in many departments of the law. His introduction to the digest and subject-index may, therefore, better be deferred to the end of the first year, and the careful study of them to the second or third years.

Brief-making is the attempt to put into practise all of the knowledge of substantive law, of legal bibliography proper, of legal research and its mechanical processes, of analysis, of logic and finally of constructive argument which the lawyer possesses. The brief is the supreme result of the application of all the legal faculties. Obviously such a subject can not be taught in its entirety as one topic. The instructor must assume such a previous knowledge as will enable the student to analyze his case, determine the principles which probably apply, search out the apposite statutory and case law and locate it in authoritative repositories. He can then take up the problem of the orderly and logical presentation of this material, giving form to the argument in accordance with legal rules, and with the support of authorities properly cited. Such a course necessarily cannot be given advantageously until the third year.

It would be possible for much of the material above mentioned to be taught in connection with other subjects, and in some schools the only instruction given is in courses designated as Elementary Law, Introduction to Law, Study of Cases, Practise Court Work, and the like. In other schools reliance is had on the initiative

of professors to teach the bibliography of their own subjects, and incidentally to give the student both a respect for books and a practical knowledge of how to use them. This means that only a fragmentary exposition is made leaving the student largely to his own resources, with the usual result that he falls in the midst of many stools. Undoubtedly the course can best be given separately but with the cordial co-operation of the whole corps of teachers.

This leads us to the question of the qualifications and status of the instructor. Should the course be given by the law librarian or partly by him and partly by another instructor? Evidently this subject has more direct connection with the work of the librarian than any other in the curriculum. Long before it was thought of as a formal subject, he was already teaching it to individual students, and if alive to his opportunities, he will always continue to do so. It is a subject requiring an intimate and extensive knowledge of legal literature, which is the special province of the librarian. Moreover, he must as a matter of course know his books not only in their contemporary development but in their historical origins. He must have this knowledge in order to be an efficient librarian. But he must also be trained in the law and have had some experience as a practitioner. Conversely, an established professor of law who essays to teach legal bibliography must have the training of a librarian. And in either case the man selected must have ability and willingness to teach by methods both arduous and monotonous. He must be able to draw inspiration from changing groups of students rather than from rapid development of his subject from year to year. As a matter of fact, it makes little difference in the formal part of the instruction whether the teacher be librarian or professor, so long as he be properly qualified. The subject, however, is the only one in the whole curriculum which can be taught by the librarian without drawing his interest away from the library. Moreover, he ought to become a better librarian from the necessity of systematic revision of his knowledge in preparation for the annual course of instruction. His library is the laboratory for the course, and his office or even the library itself the logical place for holding classes. He is more accessible to the student than the professor usually is and can, therefore, carry on individual instruction supplementing the regular course.

The solution of practically all of the questions which have already been raised depends on the methods which are used in teaching. These now vary with the aptitude, time, and predilections of the teacher. While the case method of teaching substantive law has been almost universally adopted, the method of teaching legal bibliography has yet to be standardized. In some schools only lectures are given, in others lectures with demonstrations by the instructor. To the latter method is sometimes added problems to be solved and presented in written form. A fourth method is to give preliminary lectures to the whole class followed by practise work given to small sections of the class. Instructors who have tried several methods usually fall back on a combination of them all. Recurring to the three phases of the subject above outlined, it is evident that legal bibliography proper, the origin, history, and description of the repositories of the law, is susceptible of presentation in the form of lectures, with exhibition of notable examples of great books, outlines of legal literature, and required reading in works descriptive of law books. How to find the law, is a problem best solved by trying to do it. But this attempt must be under proper guidance. Each student needs personal attention, and this he can not get in large classes. A certain amount of exposition is required at each stage of development of the subject which can be given to large groups, but the actual driving home of points so that the student feels their force must be done in seminars of from twelve to fifteen students. Each student must be given individual problems and must be carefully checked up by the instructor. This method while most helpful to the student throws a large burden on the teacher. The preparation of the problems is tedious and taxing and actual class work for each problem is multiplied by the number of sections. For instance, in one school, in order to give each student one hour a week, it was necessary for the librarian to hold nine seminars a week. He became in fact, a hard working drill-master, but was amply repaid by the results of his labor. All that has been said about methods of teaching how to find the law seems to the writer to apply with equal force to brief-making. The instructor needs to serve in the critical capacity of both opposing counsel and judge in order that the student may have a proper incentive to prepare a brief that will stand such tests as are applied in actual practise.

The purpose of this article has not been to state conclusions but to raise questions for discussion by men now teaching legal bibliography. If any categorical statements have been made they are merely expressions of personal conviction at the present stage of the writer's experience. The authoritative word on present problems of the teacher of legal bibliography has not yet been spoken, and it can spring only from the combined thought of men who have common interests and problems. Legal bibliography is not the most important subject to be treated in law schools, but it is one worthy of serious attention, and it presents pedagogical difficulties as well as those of substance. If overcome in a scientific way, the results may be of service to those who are attempting to teach the bibliography of other subjects than law.