The ABA, the AALL, the AALS, and the “Duplication of Legal Publications”

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Between 1935 and 1940, the American Bar Association, the American Association of Law Libraries, and the Association of American Law Schools joined forces to work on solutions to a problem often referred to as the “duplication of legal publications.” The need for practicing attorneys and law libraries to purchase multiple and duplicative versions of published law reports and other law books was burdensome in costs, complicated the research process, and contributed to what the American Law Institute identified as the two chief defects of American law: “its uncertainty and its complexity.” This article highlights the efforts of the ABA, the AALS, and the AALL to develop solutions to the problem, focusing on the leadership of Harvard law librarian Eldon R. James within the ABA and elsewhere. Although these efforts ultimately failed, the story illuminates a moment in the history of law librarianship in which a prominent law librarian provided leadership on a matter of concern to the entire legal profession.

Introduction

¶1 On December 30, 1937, representatives of the American Association of Law Libraries (AALL), the American Bar Association (ABA), and the Association of American Law Schools (AALS) gathered during the AALS annual meeting at the
Hotel Stevens in Chicago. They met at the invitation of Eldon R. James, Professor of Law and Librarian at Harvard Law School, and chair of the ABA Special Committee to Consider and Report on the Duplication of Legal Publications. The Special Committee had been formed with little fanfare in 1935.1 James was in his second year as chair, having succeeded Harvard Law Dean Roscoe Pound in 1936. He had called the meeting to discuss the possibilities for joint action on the problems posed to the bar by the large and growing numbers of court reports and other law books, a condition often described at the time as “the duplication of legal publications.”2

¶2 It was neither new nor unusual for lawyers to complain about having to deal with “too much law.” Historical concerns about too many law books are limited neither to common law legal systems nor to the post-Gutenberg age.3 Because of their reliance on precedents found in judicial opinions, common law lawyers in particular have complained about too many published opinions at least since the time of Francis Bacon in the early seventeenth century.4 The problem remains alive today in the background of twenty-first century controversies regarding citation of unpublished opinions in federal and state courts.5 American lawyers challenged by perhaps two million reported cases in the 1930s6 would likely be astounded at the number of appellate cases available since the introduction of commercial legal databases in the mid-1970s.7

¶3 In the 1930s, it was not out of place for the ABA to be concerned about the problem of too many law reports. The problem of “duplication” of legal publica-

2. Committee on Legal Publications Takes Action, 24 A.B.A. J. 91, 91 (1938). Herbert F. Goodrich had accepted an invitation to the meeting on behalf of the American Law Institute, but was unable to attend.
3. Michael Hoeflich has pointed out that the problems of dealing with large amounts of legal sources extend back 2000 years and not only to common law systems. He notes particularly the growth in legal sources after the mid-fifteenth century prompted not only by the development of printing with movable type, but also by the rise of nation-states, which required lawyers to deal with Roman law, canon law, and the law of their states. M.H. Hoeflich, Essay, The Lawyer as Pragmatic Reader: The History of Legal Common-Placing, 55 Ark. L. Rev. 87, 92–93 (2002).
4. See, e.g., Francis Bacon, A Proposition to His Majesty . . . Touching the Compiling, and Amendment of the Law (c. 1616), reprinted in 13 The Works of Francis Bacon 61, 68–69 (James Spedding et al. eds., London, Longmans Green 1872).
7. In 1975, 44,000 new cases were published each year, adding to an estimated total of three million. J. Myron Jacobstein & Roy M. Mersky, FUNDAMENTALS OF LEGAL RESEARCH 7 (1977). By 2009, there were over seven million published reports, with 200,000 being added each year. Steven M. Barkan, Roy M. Mersky & Donald J. Dunn, FUNDAMENTALS OF LEGAL RESEARCH 32 (9th ed. 2009).
tions\(^8\) had been of interest to the ABA from the mid-1880s through the first two decades of the twentieth century, especially for the impacts of multiple versions of published law reports on the work of the practicing bar. In his history of the ABA, Edson Sunderland called it “one of the most baffling subjects” with which the Association dealt.\(^9\) By the 1930s, however, two other associations established near the beginning of the twentieth century had matured to where they too might exert influence on this and other matters of mutual concern. The American Association of Law Libraries had grown from thirty-four individual charter members in 1906 to 172 regular members in 1933.\(^10\) The Association of American Law Schools was formed in 1900, with thirty-two law schools as charter members, and had seventy-seven member schools by 1933.\(^11\) More recently, the American Law Institute (ALI) had been founded in 1923 by a group of prominent judges, lawyers, and law professors with the goal of promoting “the clarification and simplification of the law and its better adaptation to social needs.”\(^12\)

\(\S\)4 The 1930s initiative to solve the problem of the “duplication” of publications was significant not only because it was a joint effort by these organizations, but because it was coordinated within the ABA and with the other associations by Professor James, the Harvard Law Librarian. This article describes those efforts (and their eventual failure) in hopes of shedding light on a forgotten moment in the history of law librarianship in which a prominent law librarian provided leadership on a matter of concern throughout the legal profession.\(^13\)

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8. In the nineteenth century, the issue was usually referred to as the “multiplicity” or “multiplication” of reports. See, e.g., John F. Dillon, *American Institutions and Laws*, 7 ANN. REP. A.B.A. 203, 224 (1884); *Book Review [Law Reports]*, 18 N. AM. REV. 371, 377 (1824).


10. See John W. Heckel, *American Association of Law Libraries: Charter Members, Officers and Meeting Places, 1906–1956*, 49 LAW LIBR. J. 225 (1956) (list of charter members); *American Association of Law Libraries, List of Members, January 1, 1933*, 26 LAW LIBR. J. 15 (1933). Two of the regular members in 1933 were libraries; the others were individuals. There were also twenty-eight associate members, sixteen of which were clearly identifiable as law book publishers or individuals affiliated with publishers.


13. The events discussed in this article are not covered in the published histories of law librarianship listed in *The American Association of Law Libraries: A Selective Bibliography* (August 2010), in AALL REFERENCE BOOK 10–1 to 10–4 (Frank G. Houdek comp., 1994– ). The best source of information about the period covered is Helen Newman, *History of the American Association of Law Libraries: The Roafle Plan and the Middle Years, 1930–1942*, 49 LAW LIBR. J. 105 (1956). Throughout the article, I have provided brief biographical information about those law librarians who were major actors in these events.
The ABA and the Multiplicity of Reports

¶5 The number of published American decisions grew rapidly after 1850, particularly during the last quarter of the nineteenth century. In his History of American Law, Lawrence Friedman writes: “By all counts, the basic literature of the law, the most prolific form, was reported case law. . . . This fabulous collection was so bulky by 1900 that the Babylonian Talmud or the medieval Year Books seemed inconsequentially small in comparison.”

¶6 In part, the growth in case law in the late nineteenth century could be explained by the number of new or reorganized appellate courts in both the state and federal judicial systems. As the volume of decisions issued by state and federal courts grew, officially appointed court reporters lacked the resources to keep up. As a result “[t]he private sector saw commercial opportunity in the increasingly untimely publication of official reporters, and also in parsing the growing number of opinions in various ways.” Thus, the growth in published decisions was mainly driven by commercially published unofficial versions of reports, which largely duplicated the content of the official reports. To be sure that they had access to all potentially useful precedents, many lawyers felt the need to purchase both the official and the commercial versions of their own jurisdiction’s reports, as well as the reports from other states. The commercial versions were more timely, issuing new decisions in pamphlet format while the official reports were published only in full volumes, but courts often required citation to the official versions; some versions were well indexed, some less so; some headnotes were inferior to others.

¶7 In 1879, after successfully publishing decisions (mostly from Minnesota) in newspaper format, the West Publishing Company offered its first regional compilation of state cases, the North Western Reporter. The West Company succeeded in meeting lawyers’ needs for better reporting and access by developing products notable for their accuracy and comprehensiveness. Although some of West’s competitors attempted to follow the English practice of selective publication of court


opinions,18 West’s comprehensive case reporting system prevailed19 and contributed to a “gigantic growth in published cases” during the last quarter of the nineteenth century.20 In The Ages of American Law, Grant Gilmore wrote: “After ten or fifteen years of life with the National Reporter System, the American legal profession found itself in a situation of unprecedented difficulty. There were simply too many cases, and each year added its frightening harvest to the appalling glut.”21

¶8 Describing what Thomas Young later called “a terrifying picture of the future,”22 J.L. High in 1882 methodically set out the number of published volumes of American reports and the number of sitting state, territorial, and federal judges in order to argue that “the ratio of increase in the published volumes [was] constantly accelerating.”23 High predicted that “lawyers now in practice at the bar may live to see the number of volumes of reports in the English-speaking countries exceed twenty thousand.”24 At one point, lawyers in twenty states were served by three separate series of reports: the official and two commercial series.25

¶9 As the bar professionalized in the last quarter of the nineteenth century,26 complaints about the masses of decisions were voiced regularly at bar association meetings. At the ABA’s second annual meeting in 1879, Edward J. Phelps pointed out that: “Perplexed as the law has become with infinite legislation, confused and distracted with a multitude of incongruous and inconsistent precedents that no man can number, it is a different system now, although still the same in name, from that which [John] Marshall dealt with.”27 At the 1884 meeting, Judge John F. Dillon devoted much of his address, titled American Institutions and Laws, to the place of judicial decisions in common law jurisprudence,28 which encouraged publication of more and more cases. “Where,” asked Dillon, “is this multiplication of reports to end? Is it to go on unchecked indefinitely?”29 Despite the importance of newly decided cases to the lawyer, would their growth cause the system to “break down under its own ever-increasing and insupportable weight”?30

18. In 1871, the Bancroft-Whitney Company in San Francisco began publication of its selective reporter, American Reports, designed to report state cases of national importance, not “leading cases,” only, but . . . includ[ing] all other cases that may be deemed useful and important as illustrations of established principles. Id. at 124–25 (quoting from the preface of the first volume of American Reports).
20. Id. at 22.
24. Id. at 435.
27. E.J. Phelps, Annual Address, 2 ANN. REP. A.B.A. 173, 175 (1879).
28. Dillon, supra note 8, at 223 (“In no other system of jurisprudence is such force given to judicial judgments.”).
29. Id. at 224.
30. Id. at 226.
Although Dillon’s speech ended optimistically, the ABA passed a resolution referring his concerns about "the evils of the system of reporting the decisions of the courts" to its Committee on Judicial Administration and Remedial Procedure. In 1885, the Committee reported (with reference to Dillon) that: "The evils of the system are manifold and great, and growing; but where the remedy shall be found is a question to which the committee find it exceedingly difficult to furnish a solution." In 1886, it offered a resolution opposing legislation “prohibiting or limiting the publication of any class of reports of judicial decisions.”

The matter continued to be discussed in speeches and on the meeting floors of the ABA and state bar associations. In 1894, the ABA created a Special Committee on Law Reporting “to ascertain the condition of law reporting throughout the Union.” The following year, the Committee offered a detailed report tracing the history of complaints before the ABA and elsewhere about the “multiplication” of reports, along with the results of its own study of reporting practices. In 1895, the Special Committee was reconstituted into a standing committee covering both reporting and digesting. The new Committee on Law Reporting and Digesting would continue until 1919, commenting frequently on the continuing growth in the amount of published case law, and considering ideas for reducing the number of published opinions or shortening those that were published, while occasionally offering suggestions to improve the digests.

In 1914, the Committee acknowledged its long-standing inability to come up with “practicable plans” through which the ABA could influence the numbers of published decisions, and recommended the appointment of a special commit-

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31. Dillon found hope in the growing importance of legislation as a source of law, the full development of each state’s jurisprudence to the point where the need to turn to other states’ decisions would be less crucial, and greater reliance on the fundamental principles of the common law than on decided cases. Id. at 228–33.


37. Id. at 362–63 (tables containing detailed responses follow page 366).

38. Transactions of the Eighteenth Annual Meeting of the American Bar Association, 18 ANN. REP. A.B.A. 3, 30–31 (1895). In proposing the change, Judge Simeon Baldwin said:

The importance of the subject of law reporting and law digesting, both to the bar and bench, cannot of course be over-estimated, and a standing committee reporting annually, if they saw occasion, could make recommendations for action from a higher and better vantage ground, and with a broader view of the subject than any special committee.

Id. at 30.

39. Transactions of the Thirty-Seventh Annual Meeting of the American Bar Association, 37 ANN. REP. A.B.A. 5, 24 (1914). On the floor, the committee chair, Edward Q. Keasbey, noted that some of the difficulties lawyers faced were due to the existence of “a business enterprise by which the reports of all the states are published in one series.”
tee, with members from each state who would consult with local judges, attorneys, and court reporters, and make recommendations to the ABA. 40 This became the Special Committee on Reports and Digests, and its final report was published in the July 1916 issue of the ABA Journal. 41 At the annual meeting in September, its chair introduced the report by saying: “No more important subject is before the Association than of curbing in some way the enormous volume of literature that is put forth embodying the opinions of courts of last resort.” 42

¶13 The Special Committee report itself consisted primarily of a “Digest of Correspondence” summarizing the information it had gathered regarding state constitutional or statutory provisions for the publication of court opinions, with comments by individual correspondents on more general topics: whether briefs of counsel should be published, the importance of the official reports, etc. The report briefly referenced the history of the ABA’s concerns with the increasing volume of reported cases and explained the Committee’s own data-gathering efforts. It made no specific recommendations for adoption by the ABA, urging only that “continued and unceasing effort be made, based upon the data embodied in this report, to accomplish something definite along the lines herein indicated.” 43

¶14 With the adoption of its report, the Special Committee was dissolved, and jurisdiction over the problem of the multiplicity of reports returned to the standing committee, now called the Committee on Reports and Digests. The standing committee’s 1917 report summarized the Special Committee’s work and adhered to its conclusion that little could be done to limit publication of appellate opinions because lawyers wanted to see “all the decisions that there were” and were willing to purchase the unofficial reports to obtain them. 44 In addition, the Committee presented a resolution to send a memorial to state courts of last resort and statewide appellate jurisdiction, as well as to the federal circuit courts of appeals and district courts, urging the courts to shorten their opinions and reduce the number of reasoned opinions. 45

¶15 In 1919, the Committee’s report offered only a history of its activities from 1894 on, ending with the sentence: “The committee has no further report to make this year.” 46 On the floor, the chair moved that the ABA invite the state and federal reporters and the West Publishing Company to form an association that might meet annually with the ABA to discuss matters involving the reports. The motion was referred to the Executive Committee. 47 In a constitutional revision of that year,

40. Id. at 26.
41. Report of the Special Committee on Reports and Digests, 2 A.B.A. J. 618 (1916).
43. Report of the Special Committee on Reports and Digests, supra note 41, at 625.
44. Report of the Committee on Reports and Digests, 3 A.B.A. J. 515, 515–16 (1917).
the Committee on Reports and Digests was eliminated from the list of standing committees.48

The 1920s: The ABA and the ALI

¶ 16 The discussions regarding the multiplicity of decisions that had regularly engaged ABA committees for thirty-five years disappeared from ABA meetings after the demise of the Committee on Reports and Digests in 1919, and the creation of the American Law Institute in 1923.49 The report calling for the ALI’s establishment identified the two chief defects of American law as “its uncertainty and its complexity,” and asserted that “the great volume of recorded decisions” was a significant cause of those problems.50 For the creators of the ALI, the primary means to repair these defects would be “a restatement of the law in such a manner as to promote its clarity, simplicity and adaptation to the needs of life.”51

¶ 17 ALI Director William Draper Lewis regularly reported on ALI activities at ABA annual meetings. In 1923, not long after the meeting that created the ALI, Lewis told the ABA that “[t]he primary purpose of the restatement is to make clearer, simpler, and better adapted to the needs of life, the common law, so that our system of administering and developing law may not break down under the weight of reported cases.”52 Presenting figures showing that the “monstrous and ever-increasing record”53 of American precedent had far outgrown the published volumes of English reports, the report suggested that stare decisis itself might be at risk.54

¶ 18 Lewis asked aloud how the restatements could, “no matter how well done, without being adopted by the legislatures as a code, secure sufficient authority to accomplish that simplification and clarification of the law which alone justify the time, labor and money expended.”55 He emphasized the need for both the bar and

50. ALI Establishment Report, supra note 12, at 6.
51. Id. at 41. The founders of the ALI and its Restatement project may have brought varying visions to the work of creating the Institute, but they “agreed on one important matter: the need for greater certainty in the law.” Hall & Karsten, supra note 26, at 292.
53. Id. at 71.
54. Id. at 73. The report also noted that, despite the problems posed by the growing numbers of published decisions, “there is an increasing tendency towards the citation by counsel and courts of decisions from other jurisdictions,” something made easier by “the modern books devoted to assisting counsel to find such cases.” Id. at 97.
55. Id. at 94. The difficulties of that question for the ALI are discussed in John P. Frank, The American Law Institute, 1923–1998, in The American Law Institute: Seventy-Fifth Anniversary, supra note 12, at 3, 14–16.
judiciary to give “the statements of law set forth in the restatement an authority comparable to that now accorded the decisions of our highest courts,” but also suggested that the restatements would be accompanied by treatises setting forth the law in the cases, “a full citation of authorities thereby showing that the restatement itself has been made in the light of a knowledge of the decisions of the courts [and] an analytical discussion of the problems involved.”

¶19 Agreement was reached early on within the ALI about the form of the restatements, but not regarding the accompanying treatises. In 1927 ALI President George Wickersham told the Conference of Co-operating Committees of Bar Associations and Specially Invited Persons “that the subject of the Commentary or the Treatise is one which has not yet been decided . . . . [and] is not an easy question. Perhaps it is one of the most difficult subjects that the Council will have to deal with in connection with the work.” By 1932, Lewis was telling the ALI that “it is not possible for a group as a group to write a legal treatise or monograph or essay,” and that “[t]he group treatise or monograph idea was dropped because it had to be dropped.” Had they been published, treatises keyed to the restatements would have provided another means to organize the enormous (and growing) masses of published precedents, but would have been unlikely to reduce lawyers’ need to consult the cases directly.

¶20 Work on restatements for the subjects of agency, conflicts of law, contracts, restitution, and torts began in 1923. In 1925, Lewis noted that the issuance of the first drafts had “greatly increased the number of the members of the bar who have faith in this re-statement, faith that it is possible to produce an orderly statement of the common law, and rescue it thereby from that abyss of multitudinous and conflicting precedent towards which otherwise it is inevitably slipping.” Two years later, after reporting that the federal courts of appeal were beginning to cite the drafts, he said:

We are not merely trying to add one more to the numerous law books and statements of law in existence. Unless the restatement, when finally and officially published, is widely used by the profession and relied on as prima facie evidence of what our common law is, then . . . the clarification of the law and the simplification of the common law and through that simplification the preservation of the common law system of administering and developing law, which is the object of all this work, will have largely gone for nothing.

56. 46th ABA Meeting, supra note 52, at 95.
57. Id. at 92.
59. Proceedings at the Eleventh Annual Meeting, May 4–6, 1933, 11 & 12 A.L.I. Proc. 18, 51 (1932–34) (Report of the Director, William Draper Lewis). President Wickersham noted that it had become “wholly impracticable to prepare such accurately.” Id. at 68. Both men noted that reporters Williston (Contracts) and Meachem (Agency) had already written major works on their topics. Id. at 47, 68.
61. 48th ABA Meeting, supra note 49, at 68.
63. Id. at 50.
¶21 In 1928, with the publication of the first official draft of the *Restatement of Contracts*, Lewis told the ABA that: “Today, while there are many minor problems connected with the general use of the Restatement as *prima facie*, though of course not conclusive authority, I can say with considerable confidence, that the way in which the principal difficulty can be overcome has been found.”\(^{64}\) Acknowledging that “no State Court confronted with the responsibility of deciding the instant case can properly disregard their own pertinent State decisions and Statutes,” he saw a way forward in the initiatives of state bar associations in Michigan and elsewhere to annotate the restatements with references to decisions and statutes from their own states.\(^{65}\) The following year, Lewis gave the ABA a concise justification for the state annotations:

The idea of the annotations is based on the fact that any lawyer or judge, in dealing with the instant case, should have before him, the section of the restatement dealing with the principles of law involved, statement of the decisions of his own state on the point, if any such exist, and also any pertinent state statutes. No matter how confident the lawyer or judge may be, that the restatement represents what we call the American law, he must know his own state decisions and statutes. Authoritative state annotations therefore are essential to the wise, practical use of the restatements.\(^{66}\)

¶22 In 1930, Adviser on Professional and Public Relations Herbert F. Goodrich told the ALI that while the state annotations were “[d]iscussed in terms of an experiment two years ago, this cooperative effort has now definitely become a fundamentally important part of our great cooperative project for the improvement of the law.”\(^{67}\) Later that year, Lewis announced an agreement with West and Lawyers Cooperative Publishing Company to publish each volume of the restatements in separate state editions including annotations prepared through the state bar associations.\(^{68}\)

¶23 After numerous preliminary drafts, by 1939 final restatements were published for each of the five original topics (agency, conflicts of law, contracts, restitution, and torts). For contracts (1932), volumes of annotations were published for twenty-nine states from 1933 to 1940; for agency (1933), nineteen states from 1933 to 1940; for conflicts (1934), twenty-nine states from 1935 to 1950; for torts (1934–39), thirteen states from 1936 to 1953; for restitution (1937), nine states from 1940 to 1947.

¶24 The *ABA Journal* reported regularly on the early work of the ALI,\(^{69}\) but published virtually nothing specifically regarding problems with the amount of

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65. *Id.* at 59.
published case law until the late 1920s when the first restatements were nearing final form. In 1929, Lawrence Vold discussed the uncertainty created by the number of available published cases, which he estimated at “fifteen hundred thousand.”

Two years later, in an article describing the work of the ALI, Harvard law professor and reporter for the *Restatement of Contracts* Samuel Williston offered his own counts to show the growth of published volumes of cases from 3500 in 1885 to 8600 in 1914 to 11,100 in 1928, not including the National Reporter System or other duplicates.

¶25 In 1932, the *ABA Journal* published several statements marking the completion of the *Restatement of Contracts*. In their statements, both Williston and ALI Vice President James Byrne noted the present problems posed by the large number of published cases and their fears for future growth, but were vague about how the restatements would reduce these difficulties for the practicing bar. Williston suggested that, barring legislative enactment of the language in the restatements, “the solution will be aided and more satisfactorily carried out if a preliminary attempt is made, as it is in the Restatement, to frame rules in statutory form, the correctness of which can be tested by the courts.” He was more expansive in characterizing the problems than in his earlier article:

> The rules to be derived from a multitude of decisions are sometimes clear and sometimes open to dispute; but in any event the sources from which the rules are to be sought become more and more bulky as time passes. Inconsistencies, uncertainties and complexities are the sure accompaniments of bulk, as well as increased expenditure of time in seeking applicable rules. The difficulty has not become overwhelming as yet, but surely must become so. One need only multiply the annual production of law reports by a number of years, say fifty or one hundred, small in the history of a country, to realize what search in an accumulated mass of decisions may mean.

¶26 Williston made clear his belief that treatises and digests were not the answer: “The digests themselves are becoming so bulky and expensive that aside from those of their individual states, few owners of private libraries can afford to buy and store them.” And modern treatises were themselves hardly better, providing little more than alternative organizing structures to the digests, and more citations: “Trust must be placed not only in the industry of the author, but in his ability to determine identity in principle and to discriminate between what a court says and what a court actually does. . . . [T]here is no adequate commercial return for the necessary industry and ability.”

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70. L. Vold, *Legal Scholarship and Keys to Judicial Law-Making*, 15 A.B.A. J. 685, 687 (1929) (“[A] person must have a very poor case indeed to lack for at least some claim to legal argument in support of his side of the controversy.”).
73. *Id.* at 776.
74. *Id.*
75. *Id.*
76. *Id.*
Williston offered little explanation for the great increase in published reports starting in the late nineteenth century, but another 1932 *ABA Journal* article by Albert Kocourek suggested that the twentieth century growth in the body of American case law was “in large part . . . due to the various parallel reports that began to be issued since the year 1870.” Yet, despite the contributions to the bulky masses of American law by the privately published “parallel reports” (which included “annotated reports, state-group reports, and special subject reports”) Kocourek found that each series “serves a professional need and all of them are in wide professional use.”

In the 1933 edition of his textbook on legal research, Yale Law Librarian Frederick C. Hicks defined five “systems” of law reporting in the United States: (1) the official and unofficial reporters for federal cases; (2) the official reports published by the states; (3) the Annotated Reports System, the current series of which was *American Law Reports Annotated*; (4) the National Reporter System, which for the states published “the opinions in all cases decided by the state courts of appeal, final as well as intermediate, without selection or abridgment”; and (5) special subject reports, which included cases on specialized topics from any appropriate jurisdiction. In the United States at this time, each state had at least one current series of its own reports; seventeen had one or more additional separate series of reports for intermediate appellate courts and other specialized or local courts. Selected cases also appeared in *American Law Reports Annotated* or in the special subject reporters. A 1935 article on “the inordinate production of law books” estimated that there were twenty to thirty thousand new American decisions published each year, added to a base of one and a half million.

### Initial Concerns of the AALL

In an early paper intended to introduce the restatement project to law librarians, Gilson G. Glasier suggested that the work of the ALI might, “in some slight degree, affect the multiplicity of law books by making it unprofitable for publishers to issue text books on the subjects covered by the restatement.” He found its likely greatest value in “saving a vast amount of research by judges and

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77. His 1931 piece noted that more was involved than the growth in courts that came with the admission of new states, but he gave no additional reasons. Williston, supra note 71, at 40.
78. A. Kocourek, *Sources of Law in the United States of North America and Their Relation to Each Other*, 18 A.B.A. J. 676, 681 (1932). Kocourek estimated the growth in case law as from 5000 volumes in 1900 to 30,000 volumes in 1931. *Id.*
79. *Id.*
81. *Id.* at 110.
lawyers since that work will have been done far more ably than any one working alone could do it.”

Beyond Glasier’s comments and occasional expressions of concern that the multiple preliminary drafts of the restatements might be lost if librarians did not purchase them, the AALL and its members seemed to pay little attention to the ALI and the restatement effort.

By October 1933, however, at the nadir of the Great Depression, the high cost of law books and concerns about duplication were on the minds of law librarians gathering for their annual conference in Chicago. Discussions on the floor of the meeting resulted in a motion calling on the incoming president of the Association, John T. Vance of the Law Library of Congress, to appoint a committee “which will look into the advisability of trying to prevent the unnecessary publishing and duplication of law publications.” As adopted, the motion did not suggest with which, if any, organizations from outside the AALL the committee might work. Some speakers spoke of working with publishers, others with the bar associations.

Comments before the motion was approved suggested that the librarians’ concerns with “duplication” in the 1930s were broader than the earlier concerns of the ABA or the ALI, which had focused almost exclusively on the publication of appellate court reports. The librarians’ discussions did not ignore the continuing problems posed by multiple versions of reports, but they folded into the idea of duplication problems stemming from the many competing versions of textbooks, treatises, digestes, loose-leaf services, and other publications, as well as publishers’ frequent issuance of new editions and supplements for already-purchased volumes. For these sorts of books, the problem for consumers was how to select among the alternatives to get the most benefit from their limited funds.

In June 1934, the new AALL Committee on Duplication of Law Publications offered two resolutions: one describing the “increasingly serious problem” of “publication and duplication of material in encyclopedias, services, state statutes

85. Id. at 107.
86. See, e.g., American Association of Law Libraries: Proceedings of the Twenty-Second Annual Meeting, 20 LAW LIBR. J. 17, 39 (1927) (AALL President F.W. Schenk “urg[ed] librarians to secure these publications as soon as possible, as some of them were becoming rare.”).
87. American Association of Law Libraries: Twenty-Eighth Annual Meeting, 26 LAW LIBR. J. 51, 110 (1933) [hereinafter 28th AALL Meeting] (comment of Franklin O. Poole). Note the tentativeness of the expression “look into the advisability of trying to prevent . . .”
89. One speaker described the West National Reporter System as “just clippings and compilations of various sections of the country.” Id. at 108 (comment of Gilson G. Glasier).
90. See Fred Y. Holland, The Lawyers’ Tool Chest, 9 DICTA 352, 357–59 (1932). For an earlier statement, see American Association of Law Libraries: Proceedings of the Sixteenth Annual Meeting, 14 LAW LIBR. J. 23, 25 (1921) (remarks of Sumner Y. Wheeler) (“The World War placed a damper on the publication of law books and gave law libraries a most needed rest for which we are all grateful. Many books in the past were solely commercial enterprises and contained little of value not already to be found upon our shelves.”).
and digests and other law books,” and a second, calling for appointment of an AALL committee “to confer with the American Bar Association and to take such action as may be necessary to try to prevent the enormous duplication of legal publications.” The resolutions were approved unanimously (after debate and modification), along with a motion that the committee “be appointed immediately and proceed to contact with the American Bar Association and possibly have someone attend the [next] meeting of the Bar Association and put the matter up to the Council.” With 1934–35 President Eldon James out of the country, First Vice President William R. Roalfe appointed John Vance and Fred Y. Holland to take the request to the ABA meeting in August.

¶33 Later during the 1934 meeting, the AALL membership adopted the report of its Committee on Expansion, chaired by Roalfe. The first substantive section of what came to be known as the Roalfe Expansion Plan called for greater coordination and contact between law librarians and the ABA, AALS, and “other groups engaged in undertakings closely related to or affecting their own work.”

91. 29th AALL Meeting, supra note 87, at 82. Law reports were not specified in the resolution, but apparently included as “other law books.”
92. Id. at 84. Fred Holland offered the Report of the Committee on Duplication of Law Publications on behalf of the chair, Frances Lyon, who was not present. Id. at 82. The full report was not published in Law Library journal despite editor Helen Newman's efforts to locate a copy. See Letter from Helen Newman to John T. Vance (Aug. 21, 1934) (on file at AALL Archives, Helen Newman Papers, series 85/1/202, box 16).
93. Id. at 84.
94. Newman, supra note 13, at 108 (“Before the conclusion of the [1934] business meeting, Eldon James was elected president of the Association and was notified by cable as he and Mrs. James were then on the high seas en route to Europe.”).
95. William R. (Bob) Roalfe served as law librarian at the University of Southern California, Duke University, and Northwestern University. He was president of the AALL and the first president of the International Association of Law Libraries. Kurt Schwerin, Memorial: William R. Roalfe, 73 LAW LIBR. J. 236, 236–37 (1980).
96. Holland was Law Librarian of the Supreme Court Library of Colorado. He was president of the AALL in 1936–37, and died at the age of forty-four in 1939. Memorial to Fred Y. Holland, 32 LAW LIBR. J. 426 (1939).

In a letter of October 25, 1935, A.L. Scott, the first chair of the ABA Special Committee named in 1935, suggested that “[o]ver a year ago, as a member of the executive committee of said association, I was delegated to make a preliminary survey of the situation and advise if the duplication had reached an epidemic stage serious enough to justify the appointment of a special committee to search for a sedative.” Letter from A(lbert) L. Scott to Morris L. Rixen (Oct. 25, 1935) (Roscoe Pound Papers, reel 17, item 213). There are no records of this 1934 assignment or its outcome in the ABA Journal or published proceedings of the annual meeting.
98. The stages of the plan’s adoption are traced in an editor’s note in William R. Roalfe, Development of the American Association of Law Libraries Under the Expansion Plan, 31 LAW LIBR. J. 111, 111 n.* (1938). See also Newman, supra note 13, at 108.
tees on cooperation with both the ABA and AALS were appointed by President James and offered reports in 1935.

§34 In 1931 the AALS had established a Round Table on Library Problems, which sponsored discussions on topics relating to law libraries and librarians at the AALS annual meetings in 1932 and 1933. In December 1934, one of several papers offered under the topic “Economy with Adequacy in Law Library Acquisitions” dealt with the problems of duplication in legal publications. The paper *Law Books and Law Publishers*, prepared by Arthur Beardsley, Law Librarian at the University of Washington, was presented in Beardsley’s absence by Washington Dean Harold Shepherd.

§35 Beardsley’s paper concentrated on issues regarding textbooks and other publications likely to be of interest to an audience of law professors involved in both the education of lawyers and the practice of law. He marveled at the profits turned by legal publishers during the Depression, which he attributed to the publishers’ abilities to convince the attorney that without purchasing all new law books as well as new editions of older titles (and the supplements to keep them up-to-date), “he will not be able to compete—or at least will be handicapped in his practice—with his fellow contender at the bar.” Consequently, the costs of keeping up were taxing law libraries, practitioners, and their firms to their limits. Although there were signs that the Depression was receding, it remained to be seen whether

100. Fred Holland, who had served on the 1933–34 Committee on Duplication of Law Publications, was named chair of the new Committee on Cooperation with the American Bar Association. The other members were James C. Baxter, Gilson G. Glasier, Frederick C. Hicks, Rosamond Parma, Will Shafroth, and John T. Vance. *Committees: 1934–1935*, 28 LAW LIBR. J. 2 (1935).


102. Although the correspondence regarding the temporary appointments of Vance and Holland to contact the ABA referred to the year-old Committee on Duplication of Law Publications, that committee does not appear in the list of committees appointed for 1934–35. See *Committees: 1934–1935*, supra note 100. The new Committee on Cooperation with the American Bar Association presumably took on the responsibilities of the Duplication Committee.

103. *Minutes of the Thirtieth Annual Meeting*, 1932 A.A.L.S. PROC. 5, 28. In 1934, there were fifteen AALS round tables. Nearly all were organized around subject specialties; one was devoted to “Law School Objectives and Methods.” Only that devoted to law libraries used the term “problems” in its title. See *Round Table Councils for 1935*, 1934 A.A.L.S. PROC. 162, 162–64.

104. The other papers listed for the session were: “Contents of a Library Maintained on an Annual Budget of $2500” (Lucile Elliott, University of North Carolina) and “Government Documents for the Law Library” (Miles O. Price, Columbia University). See *Round Table Conferences*, 1934 A.A.L.S. PROC. 169, 176–77.

105. Beardsley is perhaps best known for establishing the program in law librarianship at the University of Washington, where he was law librarian from 1922 to 1944. He was president of the AALL in 1939–40. See Frank G. Houdek, *The First Century: One Hundred Years of AALL History*, 1906–2005, at 36 (2005).


107. *Id.* at 52 (“It remains a seeming contradiction that, with the present financial obstacles, law publishers have been able so successfully to market their products.”). For similar commentary on the relationship between publishers and lawyers, see Feibelman, supra note 83.
improved economic conditions could improve the situation of law book consumers:

Will the members of the legal profession and the law libraries return to their former policies of, what has appeared to be, uncontrolled and ill-advised purchasing of the multitude of books printed for the so-called use of the profession? Will the publishing companies continue to produce law books at their former or even their present rate?108

¶36 For Beardsley, the textbook market in particular was flooded with unnecessary titles, and suffered the most from wasteful production and questionable sales practices.109 Yet, he did not ignore the legal profession’s long-standing concerns about “the number of printed decisions which the profession must consider in searching for precedents,”110 and expressed hope that the ALI restatements would provide “a new starting point in our common law” with the result that “there will be little need to go back of their pronouncements to the decisions upon which they have been based. The need for reprinting the old decisions will have been obviated, and the number of new decisions greatly reduced.”111 Beardsley listed possible solutions to the duplication problem, most of which focused on changes in the practices and structures of the courts and were similar to those discussed by earlier ABA committees. However, he also included a more radical approach, a proposal for “[d]iscontinuance of the publication of state reports separately from the National Reporter System and their publication exclusively in the [West] Reporters.”112

¶37 Beardsley’s paper suggested that a similar plan was coming into effect in Canada, but the longer-standing model for the idea was the Incorporated Council of Law Reporting for England and Wales, which had been established in 1865 and noted in late nineteenth century ABA discussions. In the early nineteenth century, English reports had been published in various series of reports authorized by individual judges as well as in unauthorized reports. This led by mid-century to “a confusion of reports,” which Hicks called “inconvenient and expensive, and at the same time not inclusive of all important cases.”113 Over the course of twenty-five years, starting in 1849, a series of committees of the English bar worked to develop a new system. This resulted eventually in a new series of reports published by the Incorporated Council of Law Reporting, replacing the former system of authorized reports with one series over which the bar had greater control. Under the new system, some unauthorized reports continued to be published, and could be cited

109. See id. at 53–57.
110. Id. at 62.
111. Id. at 63. For a contrary contemporary view regarding the effects of the restatements, see Thurman W. Arnold, Apologia for Jurisprudence, 44 Yale L.J. 729, 731 (1935):
Twenty-five thousand printed decisions pour from our presses each year . . . . Therefore, a great project is undertaken by the American Law Institute to restate the principles of these cases. Masses of decisions are reduced to proverbs in black-faced type, in the hope that lawyers will prefer the proverbs to the multitude of cases. . . . [The Restatement] cannot claim an authority greater than the decisions because that would make it appear like a code. Therefore the cases continue to pour out after the Restatement just as fast as they did before.
113. Hicks, supra note 80, at 85.
before the courts. In light of the complexity and costs of the schemes for publishing American reports, the desirability of modifying the U.S. approach, whether by something similar to the English system or through other means, was part of the ABA discussions over the next few years.

**Questioning West**

¶38 The June 1935 AALL meeting featured a Wednesday evening panel discussion on the duplication of law books, the centerpiece of which was an address titled “Auditing the Law Books—The Way to Relief from the Law Book Burden,” by Nebraska lawyer Philip N. Johnston, with Arthur Beardsley and James C. Baxter also scheduled to speak, and Fred Holland to act as moderator.

¶39 Fred Holland suggested Johnston as a speaker to AALL President James based on a recommendation by the president of the Omaha Bar Association, who noted that Johnston had “made a thorough study” of “the reduction of law book expense.” Johnston’s appearance became the subject of lengthy correspondence between James and Secretary-Treasurer Helen Newman, prompted in part by an expression of concern about Johnston from West editor-in-chief Harvey T. Reid.

¶40 In January 1935, James wrote to Newman regarding what he called Holland’s “insistence” that Johnston be invited to speak on the topic of duplication, pointing out that the paper might be controversial. After consulting his colleagues Franklin Poole, of the Association of the Bar of the City of New York, and Frederick Hicks, James had determined that it would be advisable to alert West to the talk and “ask them to have a representative present.” With Newman’s concurrence, he invited

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115. See Hicks, supra note 80, at 101–11.
118. Panel Discussion on the Duplication of Law Books, supra note 116, at 291 (remarks of Fred Y. Holland) (quoting a letter from the president of the Omaha Bar Association). In December 1934, Johnston had successfully presented to the Nebraska Bar Association a resolution calling for the “appointment of a committee on minimizing the expense and increasing the efficiency of the office library,” Proceedings of the Thirty-Fifth Annual Meeting [of the Nebraska State Bar Association]: Fourth Session, 14 Neb. L. Bull. 56, 59–61 (1935). The resolution asked for study of “the magnitude and the rate of growth of reported case law, and . . . whether there is any practical way to check the growth of the reports without impairing their efficiency,” as well as an investigation into “the causes and extent of duplications of matter in the various series of reports and in works of legal reference.” See also Letter from Eldon R. James to Helen Newman (Jan. 22, 1935) (on file at AALL Archives, Helen Newman Papers, series 85/1/202, box 9).
Johnston to speak and informed West about the program. West’s response came quickly in a letter from Reid, which led James to fear that “Mr. Johnston may be open to an attack on the personal side.”

¶41 In his letter to James, Reid reported that Johnston had been a West employee from 1927 to 1930, then worked on a textbook for West’s affiliate, Vernon Law Book Company. Johnston resigned from Vernon in 1931, after what Reid termed “considerable difficulty.” After his resignation was accepted, Johnston had begun attacking West in letters and circulars to officers of the company and others. Reid was particularly concerned about Johnston’s alleged claims that West was “suppressing competition by withholding licenses.” He concluded by stating that West had “no desire to enter into any argument with Mr. Johnston,” but he or another West representative would be pleased to attend the June AALL meeting.

¶42 At the meeting, Johnston harshly criticized West for its role in creating and perpetuating the problems facing consumers of legal publications. He introduced his presentation by describing “the inaccessibility of the law due to the mass of legal materials and to imperfections in finding devices, and the wastes of duplication of identical matter in different publications;” and then used illustrations from West publications to criticize the company’s reuse of case syllabi and digest paragraphs in multiple publications, the quality of the American Digest classification system and digests, and the harmful effects on law book purchasers of West’s regional approach to publishing reports and finding tools.

¶43 For Johnston, the reporting of court opinions was a natural monopoly. As such:

Duplication of the text of opinions in different reports causes direct and avoidable wastes. Such duplication makes necessary Blue Books; requires, frequently, the giving of several citations to the same case as it appears in different publications, instead of one citation to a single publication; and materially increases the bulk and complexity of citators.

More significantly: “The economic wastes of duplication of reports are tending to bring about singleness of system in the reporting field.” West’s expanding “sin-

121. Letter from Eldon R. James to Helen Newman (Feb. 6, 1935), supra note 120.
123. Panel Discussion on the Duplication of Law Books, supra note 116, at 292–321. Most of the exhibits from the talk are included in the published version of the paper in Law Library Journal; some could not be reproduced.
124. Id. at 307–08. The National Reporter Blue Book, first published in 1928 with annual supplements, provided tables showing the location in the National Reporter System for each case published in the state reports. Hicks, supra note 80, at 239–40 n.4.
125. Id. at 307–08. The National Reporter Blue Book, first published in 1928 with annual supplements, provided tables showing the location in the National Reporter System for each case published in the state reports. Hicks, supra note 80, at 239–40 n.4.
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... of system" indicated that the company was moving toward an actual monopoly in the law book industry, leaving Johnston pessimistic about the future: “[M]onopolistic control of any industry tends to prevent the bringing about of improvements; tends to perpetuate antiquated systems long beyond the time when advance in technical knowledge makes new methods possible, and new needs arising from changed conditions make improvements necessary.”

¶44 When Johnston finished, Holland invited Baxter and Beardsley to speak, and asked for questions from the audience. At that point, Harvey Reid asked if he could make a few remarks. As published, Reid’s comments were friendly toward the librarians and generally cordial in tone, serving mostly to counter some of Johnston’s claims about the digest system and its indexes.

¶45 The entire session, including Reid’s remarks, was published in the October 1935 issue of Law Library Journal. Reid, however, apparently did not know that his remarks would be published until the issue containing Johnston’s paper and the discussion following was in page proofs. Helen Newman, who served not only as AALL’s secretary-treasurer but as editor of Law Library Journal, worked with Reid over the Christmas holidays to make a few minor changes to the remarks and some additions to the proofs so the issue could be published. She later told Reid that she would be pleased if he wished to make further response to Johnston’s talk in a later issue of the Journal.

¶46 Two days prior to the evening session at which Johnston spoke, James Baxter had offered the initial report of the Committee on Cooperation with the American Bar Association. Baxter pointed out that, although his committee had been

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127. Id. at 321. 128. Id. After Reid spoke, Beardsley briefly summarized his Law Library Journal article and urged cooperation between librarians and publishers. Id. at 325–26. Baxter did not speak. Panel moderator Holland also urged cooperation, while praising the publishers for their friendship to librarians. Id. at 325. 129. See Panel Discussion on the Duplication of Law Books, supra note 116, at 322–25. 130. Letter from Helen Newman to Harvey T. Reid (Dec. 19, 1935) (on file at AALL Archives, Helen Newman Papers, series 85/1/202, box 13) (“Yesterday I received a letter from Mr. Holland telling me that you wish to edit your remarks made at the Denver meeting.”). 131. Reid made two sets of corrections, making only slight changes from the draft Newman had edited from the transcript of the session, which is in the AALL archives, as is the correspondence between Newman and Reid, preserved in letters, telegrams, and handwritten notes. 132. Letter from Helen Newman to Harvey T. Reid (Feb. 3, 1936) (on file at AALL Archives, Helen Newman Papers, series 85/1/202, box 13).
appointed the previous year, its report could be only preliminary. Because the ABA would not meet until July 1935 (after the AALL meeting), “we have been unable to receive any cooperation from that source.” 133 Citing Beardsley’s article, he then noted “the problems involved with regard to the subject of unnecessary duplication of law books [and] the financial burden to libraries because of the increasing multiplicity of production of the same.” He also reported the Committee’s sense that “to secure any immediate and lasting results from our efforts in this matter, it will be necessary that we have the sympathetic and active assistance from members of the American Bar Association, the State Bar and Local Bar Associations, and from the law book publishers themselves.” 134

¶47 Baxter then announced the Committee’s intention to “introduce a resolution . . . requesting the President of the American Bar Association at the next meeting to appoint a Committee to act in conjunction with our Committee, whereby we may work on a solution of the problem of duplication of law books.” 135 As approved the following Friday, the resolution “respectfully requested” the president of the ABA to appoint a committee: “To cooperate with a Committee of the American Association of Law Libraries to consider the problem of the increasing multiplication of law books; to consider the possible means of reducing the duplication of court reports, statutes and digests, and to report to this Association at its next annual meeting.” 136

¶48 AALL President Roalfe forwarded the resolution to his counterpart at the ABA, William L. Ransom, but the ABA had already acted. 137 In its report of July 16, 1935, the ABA Executive Committee noted briefly that “Your Executive Committee has authorized the appointment of a Special Committee on Duplication of Legal Publications.” 138 The November ABA Journal announced the creation of “a Special Committee to survey and report as to the duplication and great volume of law books and legal publications,” which were placing “a heavy financial burden” on all segments of the profession. 139 A.L. Scott, who had served on the ABA Executive Committee, was named the Committee’s first chair. Among the other initial members were Roscoe Pound, then nearing the end of his long tenure as dean of Harvard Law School, and John Vance, the Law Librarian of Congress and past president of the AALL. 140

133. 30th AALL Meeting, supra note 128, at 94.
134. Id.
135. Id.
136. Id. at 236–37. The committee chair, Fred Holland, was apparently not present for the reading of the Committee’s report, but was present to offer the resolution on Friday.
138. Report of the Executive Committee, supra note 1, at 384. The creation of the Special Committee prompted no recorded comment when the ABA met in Los Angeles in mid-July.
¶49 In the short ABA Journal article, ABA President Ransom was quoted as saying that:

[T]he problem is difficult but seems to be one which the American Bar Association should take up, in the interests of the average practicing lawyer, the law schools, the law libraries and the public. . . . [T]he new Special Committee will survey the situation from a nationwide point of view, to see what recommendations, if any, should be made to the legal profession, the law publishers, and the State and local Bar Associations.\(^{141}\)

The article closed by noting that the AALL had “interested itself actively in the subject and will cooperate with the Special Committee of the American Bar Association.”\(^{142}\)

**Recognizing Common Concerns**

¶50 The following year, the AALL held its annual meeting in August at Harvard Law School, just prior to the ABA’s own annual meeting in Boston.\(^{143}\) The AALL meeting also overlapped a Harvard Law School Conference on the Future of the Common Law.\(^{144}\) The problems of law book publishing were a continuing theme during the AALL meeting, beginning with the welcoming remarks from Harvard University President James B. Conant, Law School Dean Roscoe Pound, and Robert G. Dodge, Chair of the Reception Committee of the Boston Bar for the ABA meeting.\(^{145}\) Judge Charles Thornton Davis of the Massachusetts Land Court noted: “We are faced with such an enormous mass of material in the decisions and opinions of the courts of last resort that not even a law librarian is going to be able to keep up

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141. *Committee to Study Law Book Problem*, supra note 139, at 697.
142. *Id.*
143. *American Association of Law Libraries—Proceedings of the Thirty-First Annual Meeting*, 29 LAW LIBR. J. 95 (1936) [hereinafter 31st AALL Meeting]. After discussion at the previous year’s meeting the members of the Association voted by mail ballot to hold the 1936 meeting in conjunction with the ABA annual meeting rather than that of the American Library Association. See *Announcement: Results of Voting on Place of Next Annual Meeting*, 28 LAW LIBR. J. 337, 338 (1935).
144. The Common Law Conference was one of several held to mark Harvard University’s tercentennial. *The Future of the Common Law*, at v (1937). The problems posed by the growing volume of law reports were not discussed in detail at the conference, but were briefly noted. Lord Wright of Durley observed that in the United States, as opposed to England, “the growth of authorities has become unmanageable,” but “[t]he defect that the law is in many volumes is counterbalanced by the great value of having reports of decided cases to study whenever a principle comes in question.” Lord Wright of Durley, *The Common Law in Its Own Home*, in id. at 66, 82. See also Oliver Winslow Branch, *Remarks*, in id. at 149, 150–52 (arguing that despite “an enormous mass of decisions which is growing at an alarming rate,” the law was actually “more accessible than ever” because of digests, encyclopedias, and the restatements); William Draper Lewis, *Remarks*, in id. at 153, 155 (characterizing the restatements “as an attempt to increase the certainty of our common law” without embodying it in legislation).
145. *31st AALL Meeting*, supra note 143, at 96–103. Conant noted the pressures on library space caused by growing legal collections, id. at 97–98; Pound mentioned his assignment on the ABA Special Committee on Duplication of Legal Publications, but also pointed out the benefits of comprehensive collections of law books, id. at 99–101; Dodge expressed appreciation for the cooperation between the ABA and the AALL on “the evil, not of the number of books, but of unnecessary law books and unnecessary publication of decisions of cases,” id. at 102.
with it very much longer, much less a poor, unfortunate trial judge.”

Because neither the bench nor the publishers seemed able to solve this problem, Davis suggested creation of a committee through the ABA to “go through the reports and eliminate from each volume those that are of no earthly consequence in the development of the Law,” and create a new series of consolidated reports.

¶51 ABA President Ransom addressed the law librarians on the final day of their meeting, pointing out that he had frequently heard the opinion, “which in some localities is becoming rather militant in the profession, that there is a need for something affirmative and constructive as well as something perhaps of a preventive character with respect to this matter of duplication of law books and legal publications.” He urged the librarians to examine the first report of the ABA Special Committee on Duplication of Legal Publications, a “preliminary survey of [the] field” that would be presented to the ABA the following week.

¶52 Later that day, Fred Holland reported briefly on behalf of the AALL Committee on Cooperation with the ABA and noted that the Committee had been invited to meet with its ABA counterpart the following week. When Holland finished, George Maurice Morris, Chair of the ABA General Council, spoke from the floor to note the “great resentment among the practicing lawyers at the present situation in the law book field” and urged the AALL and ABA committees to “strike while this iron is hot . . . [while] you have something to go to the country on with the average practicing lawyer that will interest him more on what the law library is doing than the book he wants at the particular minute.”

¶53 The following week, across the Charles River in Boston, the ABA Special Committee on Duplication of Legal Publications offered its first report. In January, Roscoe Pound had succeeded A.L. Scott as chair of the Special Committee. ABA President Ransom had cautioned his AALL audience the previous Wednesday that, because Pound had assumed the chair “late in the year” and was about to leave the Harvard deanship, “the Committee was not able to do a great deal this year.” In early June, Pound had told Ransom that he had not yet gotten “any very clear light [on the report].” Two weeks later, he distributed drafts to Ransom and the members of his committee, pointing out that despite his efforts he was still far from sure of himself: “All that it seems possible to do is to state the history of reporting, show

146. Id. at 104.
147. Id. at 105.
148. Id. at 230.
149. Id. at 231–32.
150. Id. at 241. Morris was particularly incensed by West’s announced publication of Corpus Juris Secundum. See id.
151. Pound took over as chair after Scott’s resignation “[b]ecause of changes in his professional situation and work.” See Letter from William L. Ransom to Roscoe Pound (Jan. 23, 1936) (Roscoe Pound Papers, reel 17, item 221). Pound accepted Ransom’s request to chair the Special Committee despite “[t]he pressure of administrative work in my office,” because “the work of the Committee . . . is so important.” Letter from Roscoe Pound to William L. Ransom (Jan. 28, 1936) (Roscoe Pound Papers, reel 17, item 223). William Roalfe was named to the Committee at that time. Dean Pound Takes Committee Chairmanship, 22 A.B.A. J. 151, 151 (1936).
152. 31st AALL Meeting, supra note 143, at 230.
153. See Letter from Roscoe Pound to William L. Ransom (June 5, 1936) (Roscoe Pound Papers, reel 17, item 242).
what has happened in England when the bar took charge of the matter and indicate why reporting in this country has come to be what it is.”

§54 Despite Pound’s doubts, the report was substantive and detailed in the topics it covered, and it provided ample evidence of his erudition. The report began by identifying five kinds of publications that needed to be considered: “(1) law reports, (2) digests, (3) compiled statutes and session laws, (4) treatises and cyclopedias, and (5) legal periodicals,” then announced its “opinion that improvement must begin [with the law reports] and that a radical change in the methods and conduct of American law reporting should be our first objective.”

§55 After recounting the history of law reporting in England before the creation of the Incorporated Council of Law Reporting for England and Wales, Pound pointed out that in England, law reporting was now “wholly under the control of the profession. . . . The profession and the Bench co-operate to make these reports subserve the ends of the law and of the public, without imposing on lawyers or the public the burden of profit to private enterprise.”

§56 He then summarized the problems in the United States: “We have far too many volumes of reports each year. Too many cases are reported. The reported opinions are as a rule much too long. Often they are padded with quotations from a long line of previous decisions.” There might well be problems with other types of publications:

But the matter of reporting is basic. So long as reporting continues to be what it is and intermediate appellate tribunals go on rendering elaborate opinions in every case brought to them, which must then be reported in full lest some one [sic] overlook a potentially citable authority, multiplication and repetition and overlapping will go on also in the other forms of legal literature.

§57 Pound acknowledged that American lawyers could not solve this problem, which the ABA had studied since 1884, “as simply and decisively as the English lawyers were able to do,” but he argued that neither the American commercial publishers nor the official reporters or state legislators were likely to resolve it. Rather, the bar would need to educate itself, as well the public and lawmakers: “It

154. Letter from Roscoe Pound to William L. Ransom (June 20, 1936) (Roscoe Pound Papers, reel 17, item 245). In earlier correspondence with attorney Charles Buss, Pound noted the parallels between the current situation in the United States and that in England in the 1860s, concluding that while it would be hard for “the bar [to] take over this matter of reporting,” he doubted “whether anything short of that will relieve our bad situation.” Letter from Roscoe Pound to Charles M. Buss (May 4, 1936) (Roscoe Pound Papers, reel 17, item 235).

155. Report of the Special Committee to Consider and Report as to the Duplication of Law Books and Publications, 61 Ann. Rep. A.B.A. 848, 848 (1936) [hereinafter 1936 ABA Duplication of Law Books Report]. For Pound and his committee, “Improvement must come from co-operative action of [the profession, the Bench, and the legislature]. But the initiative will have to come from the Bar.” Id. at 849.

156. Id. at 850. The ABA’s earlier attempts to improve the situation are summarized in id. at 850–51. The report also included an excellent bibliography of the literature on the subject. Id. at 853–55. An addendum to the bibliography was included with the 1937 committee report. Report of the Special Committee to Consider and Report as to the Duplication of Law Books and Publications, 62 Ann. Rep. A.B.A. 912, 919 (1937) [hereinafter 1937 ABA Duplication of Law Books Report].

157. Id. at 850. The 1936 ABA Duplication of Law Books Report, supra note 155, at 852.

158. Id. at 850.
will not be an easy task to devise a plan, suited to the different conditions of different American jurisdictions, by which reporting may be done under the control of the profession so as to subserve its real purposes.” 160 The report closed by asking that the Special Committee be continued in order to complete its work and noted its hopes of cooperating with the AALL, “which has already given the subject considerable study.” 161 Pound left the Special Committee after the Boston meeting and new ABA president Arthur T. Vanderbilt named Eldon James as chair for 1936–37. 162

¶58 In December 1936, at the AALS meeting, George Bogert used part of his presidential address to suggest several ways in which that association could work to improve legal publications, 163 among them “the preparation of a critique of present day law books, with especial reference to textbooks.” 164 For Bogert, “much of the output of the publishers is vulnerable to attack.” As examples, he cited the publishers’ use of “formal printing devices” to enlarge volumes to unwarranted size; expense and unnecessary duplication; the quality of textbooks; and digest classification systems that were “extremely crude and unscientific,” and failed to provide separate places for some modern subjects. He concluded: “Too much of law book writing is hack work, done with scissors, paste pot, and digest or headnote paragraphs.” 165 Later in the meeting, the Association approved a motion from the chair of its Committee on Current Legal Literature to authorize the next year’s Committee “to cooperate with the American Bar Association committee in . . . surveying the whole field of legal publications, the inadequacies of which were pointed out in President Bogert’s address.” 166

Toward a Joint Meeting

¶59 In January 1937, in a letter to William Roalfe, Eldon James shared his initial thoughts about the issues facing the ABA committee he had been asked to chair. 167

160. Id. at 852.
161. Id. at 853. There is no indication in the proceedings that the report was discussed on the floor of the ABA meeting. At the 1936 meeting, the ABA was occupied with approving a new constitution and bylaws which changed its organization from an association of individual members to one governed by a house of delegates representing state and local bar associations and other groups. See generally Sunderland, supra note 9, at 173–82.
162. Pound’s papers at Harvard contain nothing regarding the Special Committee after he transmitted the draft of his report in late June, nor anything regarding James’s appointment as his successor.
164. Id. at 22. The other activities included aiding in the compilation of an index of American statutes and providing recommendations to useful works and reference sources in other fields.
165. Id. at 23.
166. Id. at 49. In regard to publication of state statutes, the discussion also mentioned that “the Bar Association contemplates to bring this matter before the next meeting of the Committee on Legal Publications of the American Bar Association to be held on January 5 in Columbus, Ohio. Professor James of Harvard has suggested to President Bogert that the same matter should be considered by our Association.” Id. There seem to be no records of a January meeting, although James referred to a May 1937 meeting of his committee with AALS representatives in his 1937 report to the ABA. 1937 ABA Duplication of Law Books Report, supra note 157, at 912–13.
After expressing some consternation that President Fred Holland had not yet appointed an AALL committee to work with his own ABA committee, James asked for Roalfe’s views on the subject. James himself admitted that he wasn’t sure what could be done, but:

What I should like to do is not to spend a great deal of time at this present juncture in making careful studies of existing situations but to hit at a few outstanding abuses. I am also anxious to discover what practical way there may be for us to bring the power of the organized legal profession upon the publishers. . . . I think our program must be based upon the education of the bench and bar and the legal publishers. I should like to work in cooperation with the legal publishers if they will permit this to be done. Of course, we may have to take a decided position upon a particular publication but, nevertheless, I should like to work, as far as it may be possible, in cooperation with the publishers rather than against them.\(^{168}\)

¶60 This statement is notable for several things: It expresses James’s lack of interest in the sorts of detailed studies that had engaged previous ABA committees tasked with the question; it emphasizes his interest in a practical solution that would “bring the power of the organized legal profession upon the publishers,” while hoping to work in cooperation with the bench and bar; and it notes the possible need “to take a decided position upon a particular publication,” a comment that could be read to suggest concerns about the role of West and perhaps the National Reporter System. Each of these points would prove to be important both during James’s tenure as chair of the Special Committee and after.

¶61 At the AALL meeting in June 1937, the Committee on Cooperation with the ABA reported on its work with the ABA Special Committee and on its efforts to engage the interest of state bar associations in the problem of duplication.\(^{169}\) The report also noted the Committee’s expectation that, with James chairing the ABA committee, the scope of that committee’s interests would expand beyond the problem of duplication of reports to include the quality and cost of legal publications more generally.\(^{170}\) Committee Chair Bernita Long\(^{171}\) suggested that James believed “we should have an independent committee which would be composed of members from this Association, from the Association of American Law Schools, the American Law Institute, and the American Bar Association.”\(^{172}\)

¶62 Later in the meeting, James Baxter delivered a brief report for the AALL Special Committee on Cooperation with Law Book Publishers and Publishers’ Representatives. Neither the proceedings of the 1936 meeting nor later issues of *Law Library Journal* offer any information about the origins of this special committee. Its first mention is in the list of published committees for 1936–37. Other than

\(^{168}\) *Id.*


\(^{170}\) *Id.* at 278.

\(^{171}\) Bernita J. Davies (Long) was Law Librarian at the University of Illinois from 1930 to 1970. She was the AALL president in 1942–43. Elizabeth Finley, *In Memory of Bernita Jewell Davies*, 65 LAW LIBR. J. 466 (1972).

\(^{172}\) 32d AALL Meeting, supra note 169, at 278.
Baxter, all members of the Committee were law book publishers or dealers.\textsuperscript{173} In 1937, Baxter noted that the Committee had not met and had done little since its establishment beyond holding informal discussions.\textsuperscript{174} Discussion later in the session suggested that AALL members were confused about the responsibilities of Baxter’s Special Committee and those of the Committee on Cooperation with the ABA chaired by Bernita Long.\textsuperscript{175}

¶63 After Baxter’s report, Eldon James took the floor to describe his activities on behalf of the ABA Special Committee, noting that he had spent the year thinking about the problems and writing to publishers of reports and statutes. Most had not replied, but of those who did, many felt “that everything is all right in the best of all possible worlds, and that things ought to go on just as they are.”\textsuperscript{176} After thanking Long for her work as chair of the AALL Committee on Cooperation with the ABA (he did not mention Baxter’s Special Committee), James then spoke about some of his goals for the ABA Committee, revealing much about his own thought processes and concerns:

I may say I am not interested at the moment in the study of the problem of duplication or a study of any particular phase of the problem of law book publishing. What I am interested in is in finding some method, some machinery by which those problems which undoubtedly exist and which are familiar to all of us may be tackled, and perhaps in the course of time solved.\textsuperscript{177}

\textsuperscript{174.} 32d AALL Meeting, supra note 169, at 445.
\textsuperscript{175.} Id. at 448–54. In that discussion, Baxter and Helen Newman indicated that matters involving complaints against publishers’ practices were within the Special Committee’s province. The discussion also focused in part on how law librarians might best work with the publishers’ own trade organization, the American Association of Law Book Publishers. That group was established in 1923 and dissolved in 1940, in the face of an impending investigation of law book pricing practices by the FTC. A cease and desist order was eventually issued against the Association and its members on April 27, 1944, and was upheld in Callaghan & Co. v. F.T.C., 163 F.2d 359 (2d Cir. 1947). For discussion of the FTC action, see Rollin E. Gish, \textit{The Federal Trade Commission Looks Behind the Law Book Scene}, 14 \textit{Journal} (Okla. Bar Ass’n) 854 (1943); \textit{Unfair Acts, Practices, and Methods of Law Book Companies, Ordered Discontinued}, 15 \textit{Journal} (Okla. Bar Ass’n) 863 (1944) (containing the text of the April 27, 1944, order).


In September 1937, Sidney B. Hill of the Association of the Bar of the City of New York, and a member of the AALL Executive Committee, attended the annual meeting of the American Association of Law Book Publishers in Atlantic City as an official representative of the AALL and spoke about some of the problems of law librarians regarding duplication of law books. At that meeting, the publishers’ association created a committee to cooperate with the ABA and AALL. Current Comment, \textit{Sidney B. Hill Attends Meeting of American Association of Law Book Publishers}, 30 \textit{Law Libr. J.} 545 (1937). Arthur H. Duhiq of Little, Brown & Company was named chair of the committee; other members included Harvey Reid from West; W.G. Packard of the Frank Shepard Company; and T.C. Briggs of Lawyer’s Cooperative Publishing Company. \textit{Id.}

\textsuperscript{176.} 32d AALL Meeting, supra note 169, at 445–46.
\textsuperscript{177.} Id. at 446.
He went on to express his opinion that duplication might not be the biggest problem that his committee faced, but the biggest problem of duplication was the one involving court reports, a matter of no easy solution:

What are you going to do with it? Are you going to scrap your official reports or do away with your unofficial reports? If you are going to avoid duplication you must do one or the other. If you decide to scrap your official reports look what you are up against. You are up against political interests, local pride, and the interests of printing in practically every state in the Union. If you say scrap your unofficial reports look what you are up against. You cannot do it. Reports cannot be copyrighted. It is only the head notes that are copyrighted, and, as long as the head notes are prepared and contain original matter, any publisher anywhere can copy any report. There is no question about that. You cannot scrap your unofficial reports. \footnote{178} §64 James wanted to make sure his audience understood that his thinking on the matter continued to evolve:

I am telling you what is in my mind and what I hope will be our recommendation in the next report. I am leading up to it. I know things like that take time. I am going slowly. I hint at it. At the time the report was drafted my ideas were not as clear as they are now. They are getting clear.\footnote{179}

He also suggested that his ideas were coalescing along lines similar to Pound’s: to bring the publication of law reports under the control of the bar:

What I am after is to get some kind of an organization, and the thing that appeals to me as holding more possibility of successful accomplishment in the course of time would be what I call—I don’t know that it is an especially good term—but what I would like to think of, at any rate, is a Council on Legal Publications composed of consumer interests—the American Association of Law Libraries, the Association of American Law Schools, the American Bar Association, and the American Law Institute. . . . I want to get a continuing, functioning organization to deal with your problem of duplication or any other problem of that sort . . . .\footnote{180} §65 In addition to endorsing the idea of a Council on Legal Publications, James emphasized that the ABA needed to demonstrate its commitment to solving the problems of legal publications by giving his own Special Committee permanent status within the Association:

This fight is not to be won by just fighting a battle; we are engaged in a campaign, therefore a special committee is a highly improper way to conduct a campaign, and we are asking the American Bar Association to appoint a Standing Committee on Legal Publication and Law Reporting. I hope they will do that.\footnote{181
¶66 In August, James’s Special Committee presented four recommendations to the ABA, noting a May meeting with representatives of the AALS. 182 After briefly summarizing the issues it had identified with “[s]ervices, text books, and legal periodicals,” the Committee found that those publications did not present major problems of duplication. On the other hand, the reports presented “a real problem” which would require “[t]he legal profession, if it desires to get rid of duplication in this field, [to] make a decision as to which type of report, official or unofficial, it prefers, and, when it makes its decision, set its face against the type it rejects and do everything possible to suppress it.” 183 The Committee’s report then set forth the advantages of moving toward a system relying on a comprehensive series of unofficial reports, modeled perhaps on the English Incorporated Council of Law Reporting, suggesting that a joint committee of the ABA, AALL, AALS, and ALI, “the four nationally organized groups representing the consumer interest [could] insist that the publisher or the group of publishers putting out the volumes of decisions work with such joint committee, and make decisions as to publishing matters only after consultation with it.” 184

¶67 After noting again the problems the profession faced regarding the reports and other publications (some involving duplication, some involving publisher practices such as “padding”), the 1937 Special Committee report concluded with a request that would not surprise those who heard James speak at the AALL meeting:

If the purpose manifested by this Association in the appointment of this committee is to be accomplished, it is essential that this committee should be made a Standing Committee, and that the scope of its activities should be extended. It should have within its competence a study of the whole field of legal publications, decisions, statutes, digests, services, textbooks, encyclopedias, legal periodicals, and whatever else there may be, which are submitted for the use of the legal profession. It should be a Standing Committee of this Association in order to insure it indefinite life, for success will not come as the result of a single battle, but only at the end of a long and tedious campaign. 185

¶68 The proposal to create a standing committee was not considered by the ABA House of Delegates, however, because it had failed to meet the notice requirements for proposed changes to the bylaws in the constitution adopted in 1936. 186 The Special Committee’s other recommendations—to be continued, and to continue working with the AALL, AALS, and ALI—were approved. In presenting the Special Committee report to the House of Delegates, James emphasized that the Committee wished “to bring to bear upon this problem all of those organizations of a national scope which may be considered as representing the consumer interests

183. Id. at 915.
184. Id. at 916.
185. Id. at 918.
in this matter.’”\textsuperscript{187} He also noted the Committee’s efforts to engage local bar associations, pointing out that “circular letters were sent to 1300 State and local Bar Associations and a considerable number . . . have responded and committees are now being appointed.”\textsuperscript{188}

\(\textsection 69\) On December 30, 1937, representatives of the ABA Special Committee, AALL, and AALS met in Chicago during the AALS annual meeting. The American Law Institute’s Herbert F. Goodrich had accepted the invitation but was not able to attend.\textsuperscript{189} Two representatives of the ABA Special Committee were present as well as two from AALS. There were also three librarian members of the AALL Special Committee on Cooperation with Law Book Publishers and Publishers’ Representatives, three members of the AALL Executive Committee, and one or two other librarians. Representatives of two publishing companies, not including West, were also in attendance as members of the AALL Committee.\textsuperscript{190}

\(\textsection 70\) The first report on the December 30 joint meeting came that same day on the floor of the AALS meeting. James A. McLaughlin, Chair of the AALS Committee on Current Legal Literature, reported that the group would recommend “the promotion of some permanent committee or permanent body to further the consideration and promotion of consumers’ interests with reference to legal publications,” and that “one of the first things they should consider would be the elimination of state court reports in favor of a single court reporting system to run throughout the country.”\textsuperscript{191} He noted that they had “rather conspicuously avoided coming out definitely in favor of the West Reporting System or any particular system”\textsuperscript{192} but also expressed his personal view that if West

will give us a better product, particularly stop prostituting the head notes in your reports to the interests of your digest system, if you would give us some good head notes to the cases,
of limited number, comparable in quality to what we get in the best official reports, we will use all the influence we have to get rid of all the official reports.\textsuperscript{193}

\textsuperscript{¶}71 The AALS approved a motion from McLaughlin authorizing the president to appoint a committee “to constitute the representatives of this Association in a new organization to be formed in collaboration with the American Bar Association, the American Association of Law Libraries, and perhaps other organizations, with a view to the promotion and the study of consumer interests in legal publications.”\textsuperscript{194}

\textsuperscript{¶}72 The AALL participants reported on the December meeting in the January 1938 issue of \textit{Law Library Journal}, noting the group’s unanimous agreement to recommend the formation of a permanent committee and “that one of the first subjects for the consideration of such permanent committee should be the possibility of the progressive elimination of separate state court reports in favor of a single court reporting system.”\textsuperscript{195} The February 1938 \textit{ABA Journal} published a short article with comments by Eldon James under the title \textit{Committee on Legal Publications Takes Action}. James emphasized that the primary source of increases in the bulk of legal materials of all types and in their costs was “[t]he major duplication involved . . . in the publication of separate series of the same or substantially similar reports of the decisions of the courts.” He suggested that “it would be desirable to consider the possibility of a single unified system of reports covering the whole of the United States.”\textsuperscript{196}

\textsuperscript{¶}73 In 1938, the AALL met from June 28 to July 1, 1938, in St. Paul, Minnesota, home of West Publishing Company.\textsuperscript{197} At the meeting, the Committee on Cooperation with the ABA provided a short summary of the AALL’s efforts over the past several years on the problems of duplication of legal publications. After pointing out that law librarians “[f]requently . . . have no choice in the selection of materials . . . [and i]t should, therefore, be our policy to await further action by the committee of the American Bar Association,” the Committee went on to discuss other areas of possible cooperation with the ABA.\textsuperscript{198} The report did not mention the December 1937 joint meeting in Chicago.\textsuperscript{199}

\begin{flushleft}
\textsuperscript{193} \textit{Id.}
\textsuperscript{194} \textit{Id.} at 137–38. The members appointed to the Special Committee to Co-operate with the American Bar Association and American Association of Law Libraries in the Promoting and Study of Consumer Interests in Legal Publications (including Roalfe and Hicks) are at Committees for 1938, 1937 A.A.L.S. Proc. 210, 212.
\textsuperscript{196} Committee on Legal Publications Takes Action, supra note 2, at 91.
\textsuperscript{197} In his appearance at the 1935 AALL meeting, West editor-in-chief Harvey Reid had extended an invitation for the Association to meet in St. Paul. Panel Discussion on the Duplication of Law Books, supra note 116, at 325.
\textsuperscript{198} 33\textsuperscript{d} AALL Meeting, supra note 190, at 225.
\textsuperscript{199} The 1938 report of the Committee on Cooperation with the Association of American Law Schools did not mention legal publications. \textit{See id.} at 235–36.
\end{flushleft}
¶74 The Special Committee on Cooperation with Law Book Publishers and Publishers’ Representatives did report on the December meeting, noting the discussion regarding establishment of a single reporting system and elimination of state reports. It did not mention the resolution regarding formation of a joint committee and had no recommendations for the AALL. Like the Committee on Cooperation with the ABA, the Special Committee deemed it “wise to mark time until Professor James’ committee makes its report to the American Bar Association in Cleveland next month.”200

ABA Decisions

¶75 In January 1938, the ABA Board of Governors considered a short report filed by James’s Special Committee in December 1937.201 In addition to noting its upcoming meeting with the other associations in Chicago, the Committee presented language for the bylaws changes necessary to create a standing committee on legal publications and law reporting. In urging the change, James emphasized the costs of the current situation to the bar and law libraries, and the risks to “the administration of justice as we have known it, [which] will fail simply because the cost of essential legal publications has become too great and their bulk too enormous.”202 The minutes of the Board of Governors meeting, however, show both that “it was moved, seconded and carried that it was the sense of the Board that the Committee be continued as a Special Committee” and that “a definite recommendation be made as to a possible solution of the problem which the Committee was appointed to consider.”203

¶76 Despite the position of the Board of Governors, the Special Committee’s proposed bylaw amendments were published in the June issue of the ABA Journal,204 as well as in the advance materials for the annual meeting. In July, the Journal published comments by ABA Secretary Harry S. Knight on all amendments scheduled for consideration when the ABA met that month. Knight characterized the purpose of James’s Special Committee as making “a survey and report as to duplications which create a good deal of a problem of finances and shelf space for the average lawyer, as well as a burden upon the ‘overhead’ cost of doing law work for clients.” He then noted that, while the Committee had “made an interesting start on its studies,” it was “still exploring what the Association can undertake to do along practicable lines in this field.” As a result, according to Knight, “[t]he point may be urged

200. Id. at 328–29. However little the relevant AALL committees had to say regarding the problems of duplication, concerns about the problems were expressed publicly during the meeting on at least two occasions. See Alfred A. Morrison, Ohio Reports, Statutes, and Digests, 31 LAW LIBR. J. 205, 208–11 (1938) (detailing the duplicate publication of Ohio reports); discussions during the Institute on Law Library Administration, 33d AALL Meeting, supra note 190, at 307–09.


202. Id.

203. Minutes of the ABA Governors Meeting 26 (Jan. 1938) (on file at ABA Records Office).

in Cleveland that the province and usefulness of the Committee have not yet been canalized sufficiently to warrant the sacrifice of flexibility which is inherent in transmuting an experimental Special Committee into a Standing Committee with fixed title, powers and duties.”

The comments accurately suggested what would happen in Cleveland.

¶ 77 James did not attend the 1938 ABA meeting in late July. His report, which had been distributed in advance of the meeting, was presented by committee member Clarence A. Rolloff. The report included the joint statement issued after the December 1937 meeting, which called upon the three associations and others with similar interests to create a permanent committee with representatives from each to “study continually and to promote the interests in question” and to make “one of the first subjects for the consideration of such permanent committee . . . the possibility of the progressive elimination of separate state court reports in favor of a single court reporting system.”

¶ 78 The body of the report provided a detailed discussion of the Committee’s reasoning in support of a single reporting system, including its sense that there was a possibility (perhaps even a probability) “that the system of precedents under which our law has historically developed may have to be changed into something else, simply because we can no longer continue to apply it on account of the bulk and cost of legal materials.” The report left open the question of whether the National Reporter System could be the basis for the new single reporting system, suggesting that “there might be developed a more satisfactory unified unofficial series of reports covering the whole of the United States than now exists in the National Reporter System, if it could be ascertained just what changes in that system the legal profession desires.” The report briefly discussed issues relating to digests and other publications, but emphasized that the great number of reported decisions was at the root of the problems posed by these publications. It concluded with a statement that:

The questions which fundamentally are the concern of this committee are deeper and broader than those involved in certain objectionable publications . . . . The solution will come only through several years of hard work in guiding the legal profession to a realization of the fundamental questions involved and working out some scheme which presents possibilities for improvement.


208. Id. at 469.

209. Id. at 466.

210. Id. at 470.
To accomplish these goals, the report offered language for bylaw amendments to create a new permanent Committee on Legal Publications and Law Reporting, referring to the 1937 Special Committee report where “[t]he reasons for the proposed amendment are set out fully.”

§79 The ABA Committee on Rules and Calendar failed to approve the recommendation to create a permanent committee on the slightly contradictory grounds that “there is no likelihood that [its work] will be interrupted by discontinuance of the Committee so long as it continues to do the excellent work which it has been doing” and that “[t]here are advantages in flexibility in keeping the committee as a Special Committee until further experience shall have demonstrated the advisability of making it a Standing Committee.” Without the Rules Committee’s approval, the amendment was neither adopted by the House of Delegates nor acted upon in the Assembly. The recommendations continuing the Special Committee and authorizing it to form a new joint committee with the AALS and AALL were approved by the House of Delegates, as was the recommendation to “broaden” the title of the Special Committee to “Legal Publications and Law Reporting.”

§80 Although the Special Committee was continued and authorized to work with the AALL and AALS, its membership changed completely for 1938–39. James was replaced as chair by Professor James E. Brenner of the Stanford Law School. Brenner had organized the Stanford Law Library after receiving his law degree in 1927 and was involved with the library for much of his long tenure on the Stanford faculty. He had demonstrated an early interest in data-gathering and surveys for the State Bar of California, which made him an appropriate chair for the reconstituted ABA Special Committee.

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211. Id. at 465.
213. Proceedings of the House of Delegates, 63 ANN. REP. A.B.A. 143, 145 (1938) (stating that the proposed amendment was not adopted).
214. Sessions of the Assembly of the American Bar Association, supra note 206, at 124 (“The proposal to change to a Standing Committee on the Duplication of Legal Publications and Law Reporting was not acted on by the Assembly. It had not been acted on favorably by the House.”).
216. See Special Committees, 63 ANN. REP. A.B.A. 33, 35 (1938).
217. One biographical source states that upon receiving his law degree from Stanford in 1927, Brenner had been asked to organize the law library, and that he “placed it in excellent operating condition, continuing to supervise it for some twenty years.” Memorial to James E. Brenner, 38 J. ST. B. CAL. 365, 366 (1963). Other sources indicate that his actual tenure as librarian extended only to 1932, although his responsibility for the library may have been longer. See James E. Brenner, 1889–1963, 49 A.B.A. J. 640, 640 (1963). Brenner served on the Stanford faculty until retiring in 1955. He is listed as a member of the AALL Executive Committee for 1934–35, but otherwise seems to have made no mark in law librarianship. Throughout his career, he was active in the ABA and the National Conference of Bar Examiners, and he served from 1947 until his death in 1963 on the Council of the Survey of the Legal Profession. His memorials do not mention his two years of service as Chair of the ABA Special Committee on Legal Publications and Law Reporting.
218. Memorial to James E. Brenner, supra note 217. He was frequently involved in surveying the profession. See, e.g., News of State and Local Bar Associations, 19 A.B.A. J. 127, 127 (1933) (“James
Brenner announced his plans in a memorandum to the Special Committee headed “Suggested Program for 1939.” The memorandum indicated that Brenner delayed writing to the Committee until he could review the reports of earlier ABA and AALL committees and confer with ABA President Frank Hogan about the Committee’s work. His research led him to conclude that “[t]he local problems seem[?] too numerous and the factual situation too varied to attempt to find a solution for all of the forty-eight states in a single study.” Because the problems were so diverse nationally, “it has been suggested that this year’s committee proceed as a fact-finding body,” surveying lawyers “in a few typical states.” He then outlined the process he thought it best to follow and asked the committee members to let him know what they thought. Despite the authorization to continue working with the AALL, AALS, and other organizations, the memorandum made no mention of collaborating with those groups.

In December 1938, the AALS took a much different approach. Its Special Committee on Consumer Interests in Legal Publications reported its unanimous belief that “the James Report[,] forms the basis of the only plan which satisfactorily may be devised to cope with the problem of the duplication of law books.” The AALS Committee then recommended its own discharge and replacement by a permanent Committee on Legal Publications and Law Reporting, two members of which would be designated to work with the ABA and AALL on a central committee charged with studying and reporting on matters involving legal publications and law reporting. The ABA did not make its own Special Committee permanent, but the AALS did.

Post-Mortems

In 1939, Gilson Glasier offered his first report as Chair of the AALL Committee on Cooperation with the ABA. Glasier began with the comment that the work of the Committee was “not confined solely to duplication of law books, but that the purpose of the committee as originally organized was to cooperate

E. Brenner, research secretary of the Committee of Bar Examiners, delivered an address on “The State Bar Economic Survey of Attorneys Admitted During the Past Three Years.”); Current Events, 23 A.B.A. J. 149, 151 (1937) (“Professor James E. Brenner, Stanford University, discussed ‘State Surveys of Law Schools’ [at the 1936 AALS meeting].”).

219. Memorandum from J.E. Brenner to Members of the ABA Committee on Law Reports and Legal Publishing (n.d.) (on file at AALL Archives, William R. Roalfe Papers, series 85/1/207). Roalfe may have received the memo in his capacity as 1939 chair of the AALS Committee to Cooperate with the American Association of Law Libraries.

220. Id.


with the American Bar Association in any field in which it might be possible and advisable to do so.”

¶84 Despite his disclaimer, Glasier’s report focused first on the ABA’s long-standing involvement in the problems of the “constantly increasing multiplication and duplication of legal publications,” going back to the mid-1880s and ending in 1919. The report then turned to the briefer history of the AALL’s own involvement beginning in 1933, and suggested that it had been “the motivating influence in persuading the American Bar Association and the Association of American Law Schools to cooperate with us in the further development of this subject.”

¶85 After recounting the recent efforts of the three associations, the report described the questions in a new survey that the ABA Special Committee had issued to lawyers in five states. Glasier concluded that his “committee believes that the steps being taken by the committee of the American Bar Association are in the right direction and should have the commendation and approval of this Association.”

¶86 Following up on the action of the AALS in December 1938, Glasier then offered a resolution (using the same language as that adopted by the AALS) to create a new permanent AALL Committee on Legal Publications and Law Reporting, two members of which would “represent this association on a central committee of the American Bar Association appointed to consider this problem.” For some reason, Glasier’s resolution included language from the AALS resolution stating that “the report of the special committee which recommended this resolution be accepted and the committee discharged,” even though there was no comparable AALL special committee to be discharged. Perhaps because of this random reference, there ensued a sometimes baffling discussion on the roles and relationships among the current and proposed AALL committees dealing with the ABA. As passed, the resolution included language creating a new permanent Committee on Legal Publications and Law Reporting, but eliminated the paragraph discharging a special committee.

224. Proceedings of the Thirty-Fourth Annual Meeting of the American Association of Law Libraries, 32 LAW LiBR. J. 207, 328 (1939) [hereinafter 34th AALL Meeting].
225. Id. at 328–29.
226. Id. at 330.
227. Id. at 331–32. Glasier’s committee had received an advance draft copy of the ABA Special Committee report from Brenner. Id. at 331.
228. Id. at 332.
229. Id.
231. 34th AALL Meeting, supra note 224, at 335–37. During the discussion, speakers variously questioned how many committees were needed, whether “discharged” referred to doing away with a committee entirely or merely appointing new members, and which committee was to be discharged by the resolution. The discussion suggests that some members thought the discharge provision referred to the standing Committee on Cooperation with the ABA.

The new committee appeared in the list of committees for 1939–40 as the Committee on Cooperation with the American Bar Association: Legal Publications and Law Reporting. Glasier was listed as chair; the other members were Hobart R. Coffey, William S. Johnston, Laurie H. Riggs, and Howard L. Stebbins. The general Committee on Cooperation with the ABA continued as well. There was no overlapping membership between the two. See Committees, 1939–1940, 33 LAW LiBR. J. 29, 29 (1940).
¶87 That evening, Laurie Riggs232 presented what would be the final report of the AALL Special Committee on Cooperation with Law Book Publishers and Publishers’ Representatives.233 Riggs did not mention the earlier discussion regarding the report and resolution of the Committee on Cooperation with the ABA.234 His report did note the new effort by the ABA to survey “a cross section of the lawyers of five states in order to determine whether those lawyers were willing to do away with state reports in favor of the reporter system” as well as its hope to secure funding to expand the survey to another five states. The results so far showed that “the lawyers of these states are not willing to do away with the state reports.”235

¶88 At the 1939 ABA meeting in San Francisco, a short report from the renamed Special Committee on Legal Publications and Law Reporting was offered by its new chair, Professor Brenner.236 Brenner’s report began by acknowledging that “reports of predecessor committees have definitely established the fact that there is duplication of legal publications,” but that it was also apparent that the problems are not the same in all states and that the duplication of certain types of publications may be desirable in one state and undesirable in another. For this reason it seemed advisable to make a separate study in each state and to obtain the views of the attorneys in their respective states regarding the duplication of legal publications.237

¶89 He then offered a preliminary report on the status of the survey. Because of limited funding only a few states had been covered, but so far the “response to the questionnaire has been very gratifying.”238 The Committee’s recommendation to expand the survey to more states was approved by the House of Delegates without discussion.239 The December issue of the ABA Journal included a brief article

234. 34th AALL Meeting, supra note 224, at 375. The report did state its belief “that any future committee of this Association should work in close cooperation with a similar committee of the American Bar Association.” Id. (emphasis added).
235. Id. Riggs noted that four of twelve members of the Committee had signed his report, which he hoped the rest would also approve. After Riggs’s report, committee member William S. Johnston of the Chicago Law Institute offered his opinion that: “We do not need the state reports except for our own state. . . . The headnotes in the reporter system are better than those in the state reports. In addition there is the shelving problem; the state reports take up so much space.” Id. at 375–76.
236. The meeting apparently also provided Brenner’s Committee an opportunity to discuss the survey with representatives of the corresponding committees of the AALL and AALS. See Committee on Legal Publications and Law Reporting, 1939 A.A.L.S. PROC. 219, 222–23 (“At a joint conference by the committee on Law Reporting and Legal Publications in San Francisco this past summer, . . . . [r]eports were received showing that a survey was then in progress covering the duplication of law reports in five states . . . .”). No mention of this meeting was made in the ABA proceedings.
238. Id.
by Brenner on the results from the first five states, with a table showing state-by-state totals for the questions regarding duplication of reports.240

¶90 At the AALS meeting in December 1939, the report from the new Committee on Legal Publications and Law Reporting, chaired by Beardsley, with James and Hicks among the members, was decidedly more pessimistic than that of the previous year’s Special Committee. The report opened with the statement, “The work of this committee is of such a nature that its reports can show nothing of a spectacular character.” It pointed out both that “duplicating in itself is not inherently wrong,” and that “nothing can be done to restrict the lawful publication of any series of law books, which any publisher may desire to submit for the use of the profession.”241 The report found it “not unreasonable to hope” that at least in some states the National Reporter System could replace the official reports, something it listed among several “helpful lines of improvement” stemming from its work with the ABA and AALL.242 The report closed after cursory remarks regarding textbooks (broadly defined to include digests).243

¶91 In 1940, Laurie Riggs delivered the report of the AALL Committee on Cooperation with the American Bar Association: Law Reporting and Duplication of Law Books in place of Glasier, who was not present.244 The report largely provided a summary of the results of the ABA Special Committee’s expanded survey. Glasier’s written report began with the comment that the value of that survey was “not so much in the correctness of the conclusions reached as in the fact that the bar is the largest and most influential group interested in law books from the consumers’ standpoint.” As such, it would be necessary to have the bar’s “cooperation in bringing about any possible solution of the difficulties with respect to duplication and over-production of law books.”245

¶92 While the report accurately summarized the draft ABA report, it provided little guidance for future activities by the AALL. Perhaps because of Glasier’s lack of time to deal with the issues charged to the Committee, he considered his effort to be “a report of progress only” and expressed his hope that “the work may be continued under the chairmanship of someone who can give it more detailed and thorough study.”246

242. Id. at 220–21. The other suggestions included limiting the bases of appeal, creating additional intermediate courts of appeal, empowering either the court or the court reporter to determine which decisions could be published, publishing decisions in abridged form, eliminating publication of county reports, and showing opinions in cases involving no new points of law only to the parties. Id. at 221.
243. Id. at 222–23. Beardsley offered brief remarks about the report on the floor of the AALS meeting, after which the Committee was praised for its “very interesting report” and continued for another year. Proceedings of the Thirty-Seventh Annual Meeting, 1939 A.A.L.S. PROC. 13, 148–49.
244. Proceedings of the Thirty-Fifth Annual Meeting of the American Association of Law Libraries, 33 LAW LIBR. J. 169, 303 (1940) [hereinafter 35th AALL Meeting]. This committee name differed from that in the list of AALL committees for 1939–40. Committees, 1939–1940, supra note 231, at 29 (listing the Committee on Cooperation with the American Bar Association: Legal Publications and Law Reporting).
245. 35th AALL Meeting, supra note 244, at 304.
246. Id. at 310. Glasier noted that he had tried unsuccessfully to resign as chair of the Committee due to other work and that he had not had time to circulate his draft of the report to other
¶93 In July 1940, the ABA Journal published a short article under the title *Volume of Judicial Decisions*, which argued that, for all the talk regarding problems of “bulk” in judicial decisions, “there have never been any authentic statistics either kept or worked out about these matters.” 247 The article then stated that:

[F]or about two decades there has been growing evidence that the crest of the flood has been reached. . . . The total annual output of reported decisions, for example, has “leveled off” since about 1920. In the years since that time the gross number of reported decisions in the entire Reporter System has averaged about 20,000 cases each year; and this in spite of the fact that the population of the country has substantially increased, in those two decades, and the total amount of business in the nation has probably more than doubled. 248

However, despite its concerns regarding the lack of “authentic statistics” on the duplication question, the article did not provide sources for its own figures. It did note that “[t]here is solid ground for future optimism in these facts.” 249

¶94 In September, the ABA held its annual meeting in Philadelphia. The Special Committee on Legal Publications and Law Reporting filed a seventeen-page report (with nineteen additional pages of tables) reporting the results and making recommendations based on its two-year survey of lawyers in sixteen states. 250 Brenner had continued as chair, but was not present.

¶95 Under James, the Special Committee had acknowledged the importance of state and local bar associations to solving the problems charged to the Committee, 251 but it had not placed nearly as heavy an emphasis as Brenner’s 1940 report on local solutions to “the problems incident to the duplication of law reports.” 252 Brenner presented the data from the Special Committee surveys, as summarized in the body of the report and detailed in the appendixes, on a state-by-state basis. The data committee members before submitting it. *Id.* In addition to describing the upcoming report of the ABA Special Committee, Glasier’s report also included comments of two AALL members (one a member of his Committee) regarding poor publication practices and the high costs of law books, which he hoped could be studied. *Id.* at 308–09.


248. *Id.*

249. *Id.* The article did present portions of a report from Michigan (which would also be noted in the ABA Special Committee report) showing a decrease in the number of opinions issued by the Michigan Supreme Court over the previous several years. *Id.*

250. *Report of the Special Committee on Legal Publications and Law Reporting*, 65 Ann. Rep. A.B.A. 263 (1940) [hereinafter 1940 ABA Report on Legal Publications]. In 1939, the Special Committee had noted that the original five states surveyed (California, Illinois, Maryland, Ohio, and South Dakota) were selected “because they seemed to be representative and because a groundwork had already been prepared by local committees on which the American Bar Association survey might proceed.” 1939 ABA Report on Legal Publications, *supra* note 237, at 331. The additional eleven states were Alabama, Colorado, Florida, Indiana, Kentucky, Michigan, Nebraska, New York, Oregon, Texas, and Washington. 1940 ABA Report on Legal Publications, *supra* at 264. In his December 1939 ABA Journal article, Brenner had suggested that Massachusetts and Pennsylvania, but not Kentucky or Nebraska, would be included in the additional survey. Brenner, *supra* note 240, at 1047.

251. One of the Special Committee resolutions in 1937 called on state and local bar associations to appoint committees to “deal with questions of legal publications and law reporting . . . at the earliest possible moment.” In presenting the resolution James noted that he had written to 1300 state and local bar associations. *Proceedings of the House of Delegates, supra* note 186, at 313.

were not aggregated and there was no easy way to determine what all the respondents might have thought as a group. Recommendation F stated directly:

That those who make future requests for the appointment of national committees on the duplication of law reports should be referred to the facts obtained in the current surveys and advised that the problems of the duplication of law reports can best be solved through studies made by state committees. 253

¶96 The portion of the report dealing with court reports concluded that because “the problems differ from jurisdiction to jurisdiction. . . . very little can be accomplished through the national approach.” Like earlier ABA committees tasked with the problem of duplication, “your present committee [has] not been able to suggest solutions which can be applied uniformly to all states.” 254 It ended with the comment that: “Wishful thinking will not solve local problems incident to the duplication of law reports. They can be solved, however, if state bar associations will appoint able, energetic men to their state committees and give them real cooperation and encouragement.” 255

¶97 The second part of the report discussed the survey results regarding digests, encyclopedias, selected reports, and textbooks, noting the willingness of most publishers to cooperate with lawyers in solving the problems of duplication. This cooperative attitude “should make it possible for many of the local state committees to make considerable progress in solving their respective local problems incident to the duplication of law books.” 256

¶98 In Brenner’s absence, the Special Committee’s recommendations were presented to the House of Delegates by committee member Harry Cole Bates. 257 Grouped under nine headings, the recommendations called for the creation of local committees to deal with problems of duplication and high costs, called upon lawyers to shorten the briefs submitted to appellate courts and the courts to issue rules to reduce the length of briefs, and asked that the courts “be invited to the fact” that most attorneys prefer shorter full opinions, memorandum opinions when the law is clear, and omission of dicta. The report further recommended that the ABA record its opinion disfavoring unnecessary duplication of digests, encyclopedias, and loose-leaf services, and study the practicability of creating a board to review new textbooks. The final recommendation was that the Special Committee itself, “having completed its assignment to obtain the facts regarding duplication of law books and to submit its recommendations thereon . . . should be discharged.” 258

253. Id. at 264 (emphasis added). The report provided summaries and excerpts from several state bar associations reporting improvements they had negotiated regarding their states’ official reports or with West based on the Special Committee’s survey, id. at 267–70, as well as comments from “Representatives of Two of the Large Law Book Publishing Companies,” which criticized the official reporters and the practices of the judiciary, id. at 270–71.

254. Id. at 271.

255. Id. at 272.

256. Id. at 280.


¶99 The recommendations were adopted without record of discussion in the proceedings.²⁵⁹ In November, however, the ABA Journal reported that one delegate had wanted to amend the report in order to “continue the Committee for further study, but yielded to a plea by President [Charles] Beardsley that the Committee be sustained in saying ‘We have done our job.’” Another moved that the recommendations that made requests of the courts and called for discharging the Committee be removed, but the amendment failed, and the Committee was disbanded.²⁶⁰

¶100 The December 1940 issue of the ABA Journal included a two-page article about the now-defunct Special Committee and its report.²⁶¹ Based on its “imposing amount of research work and statistical investigation,” the article found that the Special Committee had “proved itself to be able as well as hard working.”²⁶² The report and the data were presented in summary, along with lengthy quotations from the publishers’ “points of view” included in the report. The article editorialized that: “Any lawyer who is familiar with the main aspects of this question of ‘Bulk’ in modern law books, knows that the fault is not entirely due to the Law Book Publishers—although they have some share in the blame.”²⁶³ The article concluded by noting that ABA committees had struggled with “this question of ‘Bulk’” for over fifty years. The 1940 report was deemed “one of the ablest and most effective, and at the same time most constructive presentations of the problem which has so far been made.”²⁶⁴ The Special Committee’s work under Pound and James was not mentioned.

¶101 In late December 1940, the AALS met in Chicago. Arthur Beardsley’s report for the Committee on Legal Publications and Law Reporting began by noting that the three committees of the ABA, AALS, and AALL had “[d]uring the past year . . . continued their joint efforts in the hopes of formulating satisfactory recommendations . . . to pave the way for the ultimate improvement or solution of the problems involved in the duplication in the publication of law books or the publication of law books of doubtful need.”²⁶⁵

¶102 The report went on quickly, however, to emphasize that any hope for reform rested with the bar and the courts, not with the law schools or their libraries: “The latter represent but a negligible quantity when compared to the number of users of law books in the legal profession. In fact, the law publishers have been heard to say that they could get along without the business of the law libraries.”²⁶⁶

²⁶⁰. House of Delegates Proceedings, 26 A.B.A. J. 821, 830 (1940). An unpublished history of the ABA’s committees on printing and publication suggests that the Special Committee “faded out. . . . War time pressures and the setting up of other committees were doubtless the reason.” American Bar Association Committees on Printing and Publishing, 1936–1958 (Clement F. Robinson comp., Aug. 1, 1958). One can speculate about the reasons why the Committee ended, but it did not “fade out.” The 1940 proceedings show quite clearly that the Committee’s own recommendation that it be discharged was adopted. Proceedings of the House of Delegates, supra note 257, at 94.
²⁶². Id.
²⁶³. Id. at 944.
²⁶⁴. Id.
²⁶⁶. Id. at 237.
The Committee then provided a detailed summary of the results of the ABA Special Committee survey and a thorough commentary on the proposal for a textbook review board. The report concluded with the statement that: “Having completed the surveys contemplated at the time this committee was created, your committee, in line with the action taken by a similar committee of the American Bar Association, feels that its work has been completed, and, therefore respectfully requests that it be discharged.”

Although the Committee was only two years old, the request was approved without discussion on the floor.

In 1940, Oscar C. Orman, Director of Libraries at Washington University, became Chair of the AALL’s Committee on Cooperation with the American Bar Association: Legal Publications and Law Reporting. Orman was not present at the 1941 AALL annual meeting, but submitted a short report noting that the ABA had discharged its Special Committee on Legal Publications and Law Reporting in favor of reliance on the activities of local bar associations. Orman suggested that the AALL should follow suit. There was no discussion of Orman’s report or the recommendation, but no committee with a specific charge to cooperate with the ABA regarding legal publications and law reporting was named for 1941–42.

Conclusion

By mid-1941, each of the three associations that had joined together under the ABA’s leadership to deal with the problem of the “duplication of legal publications” had brought to an end its individual efforts, as well as the attempt to deal with the issues together.

Certainly the ABA’s continuing commitment to the joint effort was essential to anything that might have been achieved. As Glasier pointed out in his report to the AALL in 1940, the bar’s place as “the largest and most influential group interested in law books from the consumers’ standpoint” made its interest and commitment essential to any attempts to resolve “difficulties with respect to duplication and over-production of law books.” Although the ABA seemed in 1935 to have regained interest in the “baffling subject” that it had left behind in the 1920s, its commitment turned out to be shallow. The three reports issued under the leadership of Roscoe Pound and Eldon James between 1936 and 1938 each provided thoughtful analyses of the problems charged to the Special Committee, but did not...

267. Id. at 247.
268. Proceedings of the Thirty-Eighth Annual Meeting, 1940 A.A.L.S. Proc. 13, 138. No comments were made on the substance of the report, which Charles McCormick, speaking on behalf of Beardsley, introduced in vague terms as “a description of the results reached in certain surveys made in cooperation with similar committees of the American Bar Association and of the Association of Law Libraries [sic].” Id.
269. Proceedings of the Thirty-Sixth Annual Meeting of the American Association of Law Libraries, 34 LAW LIBR. J. 159, 258 (1941). The published proceedings suggest that the report may not even have been read aloud during the meeting.
271. 35th AALL Meeting, supra note 244, at 304.
prompt substantive discussion at ABA meetings. Nor did the report on Brenner’s survey in 1940.

¶106 The reports issued during Pound’s and James’s tenures as chair of the Special Committee were notable for their suggestions of comprehensive national solutions to the problems, something that was rare during the many prior years of the ABA’s attention to the multiplicity and duplication of reports and other law books. Earlier standing and special committees had done studies and surveys and issued reports, but few had posed solutions. Pound’s 1936 report detailed the development of the Incorporated Council of Law Reporting for England and Wales, emphasizing that the English approach had placed control of reporting “wholly under the control of the profession” and had resulted in reports that were “models of what reporting in a common-law jurisdiction ought to be.”

James posed the idea of “a Council on Legal Publications” composed of representatives from the ABA, AALS, AALL, and ALI in his informal remarks at the AALL meeting, and fleshed it out in the 1938 Special Committee report, as well as in the statement issued after the joint meeting in December 1937, and in comments made after that meeting.

¶107 Neither Pound nor James was blind to the difficulties entailed in applying something similar to the English approach in the United States. Pound noted that: “Obviously we cannot deal with this matter as simply and decisively as the English lawyers were able to do in 1865.” James’s 1938 report to the ABA detailed the difficulties that would be faced by any effort to change the existing system of official and unofficial reporting. Yet he had concluded that the effort was worth undertaking. The proposals of the Pound and James committees might not have been workable, but Brenner’s 1940 Special Committee, praised for its hard work and “constructive presentation[] of the problem,” itself came up with nothing more than sending the problem back to state and local bar associations.

¶108 After the 1938 ABA meeting, James and all the members of his Special Committee were gone, replaced with new members appointed by ABA President Frank Hogan. By 1938, James had chaired the Committee for two years; John Vance had served for three years; Clarence Roloff and John Scott for two; and Minier Sargent for one. Under the ABA constitution approved in 1936, none were barred from serving again.

An examination of the committee lists for 1937–38 and 1938–39 shows that fifteen of the special committees listed for 1937–38 were continued for 1938–39. For twelve of those fifteen, between two and five of the 1937–38 members remained on the committee; one committee returned a single mem-

273. 32d AALL Meeting, supra note 169, at 447.
275. Id. at 465.
276. 1936 ABA Duplication of Law Books Report, supra note 155, at 850.
277. 1938 ABA Duplication of Legal Publications Report, supra note 195, at 466–68.
278. Law Books and Lawyers, supra note 261, at 944.
279. The 1936 ABA Constitution stated that members of both standing and special committees “shall serve until their respective successors are appointed” and that “[t]he President shall designate the Chairman.” Constitution and By-Laws 1936–1937, 61 ANN. REP. A.B.A. 963, 990 (1936) (art. X, sec. 1).
ber. Seven chairs returned. Only one other continuing special committee (the Special Committee on Survey of Sections and Committees of the Association) retained no members from 1937–38.

§109 The reasons for the wholesale change in the Special Committee’s membership are not clear from the available materials. ABA President Hogan was nationally prominent, having been featured in a Time magazine cover story in 1935. In 1936, James and Newman had corresponded favorably about the possibility of Hogan’s being a featured speaker at the AALL meeting in Boston. There is no obvious reason why Hogan would have been personally interested in housecleaning a special committee dealing with legal publications.

§110 There is also no real evidence suggesting that legal publishers, who could have been threatened by James’s ideas, might have tried to influence the composition of the Special Committee. James’s ABA Committee had no publisher members, but publishers (although not West) were represented on the AALL Special Committee on Cooperation with Law Book Publishers and Publishers’ Representatives, and via that committee at the December 1937 meeting. James was also aware of the September 1937 formation of an American Association of Law Book Publishers committee to work with the ABA and AALL, and expressed interest in consulting with it. In his January 1937 letter to William Roalfe, James emphasized his hopes for working with the publishers, though he briefly noted frustrations with them later that year at the AALL meeting. Certainly no publishing house could feel immune from the criticisms made during AALL meetings, and from comments in the reports of committees of all three associations regarding the editorial and physical quality of some of their products, and their marketing practices. West, as the largest legal publisher and the primary publisher of reports, would have had the most to lose from any significant effort to alter the existing market for legal publications, but law librarians’ comments toward West were generally measured and frequently complimentary, as was Beardsley’s 1934 AALS paper. James, however, invited Philip Johnston to speak at the 1935 AALL meeting despite Harvey Reid’s letter of concern about Johnston. Johnston’s talk was highly critical of West, resulting in an apologetic response to Reid from moderator Fred Holland. James made no comments in the discussion that followed Johnston’s talk.

281. See Rich Men Scared, TIME, Mar. 11, 1935, at 18. The article focused on Hogan’s representation of Andrew W. Mellon in hearings before the Board of Tax Appeals. Representing the government in his “maiden appearance in the national spotlight” was the recently appointed general counsel of the Bureau of Internal Revenue, Robert H. Jackson, who would go on to serve on the U.S. Supreme Court.
282. Letter from Helen Newman to Eldon R. James (June 1, 1936) (on file at AALL Archives, Helen Newman Papers, series 85/1/202, box 9).
284. In later years, Law Library Journal editor Helen Newman at least occasionally allowed West to review transcripts of committee reports and comments made in open sessions at AALL meetings before they were published in the Journal. See, e.g., Letter from Helen Newman to L.S. Mercer (Aug. 4, 1937) (on file at AALL Archives, Helen Newman Papers, series 85/1/202, box 16); Letter from
¶111 In June 1938, Harvey Reid welcomed the AALL to its annual meeting in West’s hometown, St. Paul, Minnesota, recognizing in his remarks those librarians with whom he had become acquainted since his appearance at the 1935 meeting and singling out William S. Johnston of the Chicago Law Institute and Arthur Beardsley, each as “my friend.” He mentioned James, but was perhaps less effusive in his comments than he was about the others: “Mr. James can write me those very polite and pointed letters which require a direct answer, and I still think he is all right.”285 James was not quite a friend, perhaps, but at least he was “all right.”

¶112 The 1937 report of James’s ABA Committee emphasized the importance of resolving the problems posed by competing series of official and unofficial reports, but was evenhanded in outlining the benefits and drawbacks of the two approaches.286 The statement issued after the December 30, 1937, meeting, however, made clear that group’s agreement that the first priority of the new joint committee it proposed should be “the possibility of the progressive elimination of separate state court reports in favor of a single court reporting system.”287 Taken by itself, that proposal could be taken as favorable to West and the National Reporter System. Beardsley had suggested a role for West in his AALS paper. Yet, immediately after the December meeting, James McLaughlin, who had represented the AALS, reported that the group had “rather conspicuously avoided coming out definitely in favor of the West Reporting System or any particular system,” and expressed his own view that West should think about providing “a better product [with] good head notes to the cases, of limited number, comparable in quality to what we get in the best official reports.”288 James’s own comments, published a few months later in the ABA Journal, did not mention West, but the 1938 report of the Special Committee both criticized the quality of headnotes in the National Reporter System and stated that “there might be developed a more satisfactory unified unofficial series of reports covering the whole of the United States than now exists in the National Reporter System, if it could be ascertained just what changes in that system the legal profession desires.”289

¶113 It was apparent well before the ABA met in July 1938 that the Special Committee proposal to create a permanent Committee on Legal Publications and Law Reporting was unlikely to be approved. The ABA Board of Governors had expressed its opposition to the idea in January and ABA Secretary Knight had forecast its failure in a July ABA Journal article. It is clear from his published comments at the AALL meeting in 1937 that James believed moving the Special Committee to permanent status was essential to solving the problems of duplication in law books. He had failed in the effort to accomplish this in 1937 and again in 1938, and may have concluded that his efforts were no longer worth the frustrations they caused him, or that he himself could no longer be effective in pursuing them. In January


285. Reid, supra note 132, at 267–68.
289. 1938 ABA Duplication of Legal Publications Report, supra note 195, at 466.
1938, the Board of Governors also expressed its desire that “a definite recommendation be made as to a possible solution of the problem” the Special Committee had been asked to examine. James believed the problem required long-term study and structural changes, but the ABA Board wanted an answer sooner than he felt was possible. He had suggested when he wrote to Roalfe in January 1937 that he was uninterested in making careful studies of the problem and by 1938 believed that he had met his goal to find “a practical way . . . to bring the power of the organized legal profession upon the publishers.” We don’t know why James did not attend the 1938 ABA meeting, but he may well have concluded there was little point in his coming.

¶114 Not long after leaving the ABA Special Committee, James accepted an appointment to the recently created AALS Committee on Legal Publications and Law Reporting, on which he served until that committee was discharged in 1940. By then, however, the possibilities for change had ended. Under Brenner, the ABA Special Committee focused on surveying the legal profession in selected states. By 1940 it would conclude that “having completed its assignment to obtain the facts regarding duplication of law books,” it should be discharged.290 After appointing its first members in 1935, ABA President William Ransom suggested that the Special Committee would “survey the situation from a nation-wide point of view” before making recommendations to the profession, publishers, and bar associations.291 Under Pound and James, the Special Committee conducted no surveys, but emphasized the need for comprehensive national solutions and collaboration with the AALL, AALS, and ALI. Brenner (presumably with the encouragement of 1939–40 ABA President Hogan) started from the premise that, despite the dominant roles played by national law book publishers, the problems of duplication were local in nature. He constructed surveys to be conducted in individual states and reported the results on a state-by-state basis. His reports emphasized the need for local solutions and that “very little can be accomplished through the national approach.”292

¶115 With the ABA’s change in emphasis, the other associations could do little but follow suit, and they seemed happy to do so. Although the AALS and AALL each created a standing Committee on Legal Publications and Law Reporting to work with the ABA, after the ABA declined to make its own committee permanent, there was little for those associations to do in concert or individually. By November 1938, Beardsley and Roalfe were in agreement that a committee of the AALS “cannot do much of anything in carrying out the program of reducing the duplication in legal publications” and that “this is . . . a duty which should be performed by the American Bar Association through its affiliated state and local organizations.”293 Beardsley would chair the new AALS Committee established in 1938 (with James and Hicks serving as members), but by 1940 he would recommend its discharge. The AALL Committee was discharged in 1941.

291. Committee to Study Law Book Problem, supra note 139, at 697 (emphasis added).
¶116 James stayed at Harvard until forced to take mandatory retirement in 1942; he then served as Law Librarian of Congress from 1943 to 1946.²⁹⁴ Upon his death in 1949, James’s former dean, Roscoe Pound, wrote memorials for Law Library Journal²⁹⁵ and the AALS.²⁹⁶ In each, Pound emphasized somewhat different aspects of James’s wide-ranging accomplishments in law librarianship and beyond. For the AALS, he noted that his appointment of James to the Harvard faculty was an innovation, but important to do because “in view of the magnitude of the library and its place in the program of the School it should have at its head a scholar and lawyer equal to planning its development and maintenance on the highest plane,” and that for James the “professorship was not a mere title.”²⁹⁷

¶117 Nothing written about James upon his retirement or later at his death paid more than passing notice to his time as chair of the ABA Special Committee to Consider and Report as to the Publication of Legal Publications. By some measures his work as chair of the Special Committee accomplished little. Possibly he thought so himself. Yet James’s clear thinking about the problems he was charged with solving, as well as his ability to bring law librarians together with law professors and the practicing bar to develop proposals for their solution, suggest that he was not unsuccessful even in that small aspect of his long career. They certainly show that Pound was right to hire a librarian with professorial characteristics.

²⁹⁴. A resolution describing his contributions to Harvard and to law librarianship, as well as the announcement of his appointment, are at Dr. James Appointed Law Librarian of Congress, 36 Law Libr. J. 91 (1943).
²⁹⁶. Roscoe Pound, Eldon Revare James, 1949 A.A.L.S. Proc. 113. Correspondence between the two in Pound’s papers suggests a friendly relationship extending back to well before James came to Harvard as law librarian in 1923. After reading one of the memorials, Mrs. James wrote Pound to say: “I don’t know whether or not you have been conscious of it but you have had no more devoted, faithful, and appreciative friend in the world than Eldon. He was your true friend.” Letter from Phila S. James to Roscoe Pound (June 3, 1949) (Roscoe Pound Papers, reel 68, item 390).
²⁹⁷. Pound, supra note 296, at 114, 115. While the appointment was in process, Pound mentioned to James that he was “having some difficulty because the combination of the librarianship with a professorship is an innovation and all innovations are looked on here with suspicion.” He urged patience. Letter from Roscoe Pound to Eldon R. James (Apr. 30, 1923) (Roscoe Pound Papers, reel 78, item 398).