AMERICAN LAWYERS AND THEIR BOOKS

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In the American Bar Association Journal for November 1929 Professor Frederick C. Hicks[1] gives the members of the legal profession some insight into the functions of their professional libraries by answering the question, "What do law librarians do?" He achieves this end by creating a composite law librarian made up not "fancifully" of "imaginary" parts but possessed of the various qualifications of the persons of law librarians actually at work in the numerous professional libraries throughout the country. Obviously a knowledge of what law librarians do contributes to an appreciation of the diverse activities involved in the creation and maintenance of well-ordered law libraries. His ably presented catalog of the tasks actually being performed by law librarians, or their assistants, leaves little if anything to be added, other than to call attention to the fact that recent social, economic, and political trends, together with the constructive developments going on within the legal profession itself, all increasingly demonstrate the necessity of more generally recognizing the need for such high qualifications as he describes in the selection of law librarians.

In this article, which is not primarily concerned with law librarians as such, we will endeavor to supplement what has been said by Professor Hicks, by turning to a brief consideration of the collections of books that are housed in law libraries, the acquisition, care and utilization of which so largely occupy the librarians. Law libraries may exist without librarians, however poor they may for this reason be, but without books they cease to exist. To this extent at least, the lawyers' interest in law libraries is sound. It usually begins and ends with the utilization of the books, when and to the extent that he requires them. He is not concerned with their acquisition, custody and preservation. If they are available when he wants them, together with such assistance in their use as he may require, that is all he asks.

This, however, is not enough. He should feel some responsibility for the development of his professional libraries, as, in the final analysis, they, for the most part,

1. Hicks, *The Educational Requirements of Law Librarians.* (1929) 15 A. B. A. Jour. 699; (1930) 23 Law Lib. Jour. 62.

depend upon him for support and they exist for his almost exclusive benefit. An informed and intelligent attitude on the part of the members of the legal profession, is, therefore, indispensable and for this reason some outstanding facts with respect to their libraries, may not now be amiss.

Turning first to several of the broader considerations, we find that in 1934 there were in the United States 604 public law libraries, containing more than 1,000 bound volumes each, representing an increase of 95 libraries for the decade beginning with the year 1924.[2] The total number of books in these libraries was 11,742,803, or an average of 19,442 volumes for each library. While such a collection is in fact a rather modest one, this average is inclined to convey an entirely too favorable general impression—an impression not really supported by the facts. Obviously, a few of the great collections tower far above while a considerable number of others contribute materially to the raising of the general average, thus leaving many libraries trailing far behind. These are frequently so scattered that they are called upon to serve the needs of extremely large areas.

These general statements suggest an obvious question, namely: What are the causes that have brought about the development of American law libraries? As in supplying an answer we will also be led directly into a more detailed discussion of law books, this is no doubt a logical method of procedure.

The growth of American law libraries may be largely attributed to the combined influence of several factors, the two most important of which are, the effect of the doctrine of precedent, so firmly imbedded in our system of jurisprudence, and the multiplicty of jurisdictions resulting from our dual system of government. The great influence of the first of necessity results in the reduction of the vast body of the law to printed form. The second accounts for the numerous independent governmental agencies creating and applying separate and distinct bodies of law, which, however similar they may be, rest upon independent authority and must therefore be made conveniently available through the medium of the printed page. An additional factor of increasing importance is the consistent expansion of administrative law, by the extension of governmental regulation into one new field after another. As an inevitable result the profession is almost literally submerged in an "ocean of books." In consequence, adequate training for the bar is impossible without access to a wide variety of law books, and mastery of the great body of the law for any purpose requires extensive research. This being the case, it hardly seems necessary to add that the demands of legal education and legal research are also extremely important influences bearing upon the development of law libraries.

In meeting the challenge arising from these diverse demands, the legal profession has created the numerous law libraries mentioned above, but it should not be supposed that all law libraries are alike. As their objectives differ somewhat, the contents of their several collections vary. This is usually a matter of emphasis on particular materials according to need. For this reason, among others, it is possible to assign most of them to one of several lesser groups, each of which includes only libraries having certain characteristics in common. By so doing we may first place all the law libraries in one of two groups; namely, (1) law school libraries, and (2) practitioners' libraries of all kinds. The first group obviously owes its existence to the demands of legal education, frequently supported, however, by that usually closely related and increasingly important function—legal research. In this group there are 119 libraries, or 20% of the total for the nation. That they are law school libraries they have in common but in most other respects they vary almost beyond belief.

In the second group mentioned above, we have placed all other law libraries, first, because they may be clearly distinguished from the law school libraries and, second, because while some are official and others are unofficial libraries, they are usually used by practitioners, judges and other officials without restriction. At any rate, they all in one way or another, serve the needs of those engaged in the practical application of the law to everyday problems. Taken together there are 485 libraries of this kind, or 80% of all the law libraries in the United States. Each of these may, however, be more or less definitely placed in one of several lesser groups, because it has some additional characteristic in common with a number of others. About 50% of them, however much they may otherwise vary, have the common characteristic of being county law libraries; 71 libraries, or 15% of the total, are attached to state and federal courts and approximately 16% are libraries maintained by bar associations, lawyers' clubs and law library associations. The remaining libraries, so far as they fall into groups at all, may be designated as state law libraries, legal collections in state libraries, and municipal, state and federal departmental libraries.[3]

Let us now turn to a consideration of these many libraries from the standpoint of size, referring of course only to the number of bound volumes in each collection. As might be expected, the largest collections are usually, but not always, found where two or more definite objectives have created a combined demand. The Harvard Law Library, with almost half a million books, is the largest legal collection in the world. Obviously the combined needs of legal education and research have created a demand that it has fortunately been possible to meet. From the standpoint of size the Law Library of Congress is a reasonably close second. It contains more than 300,000 volumes, but, in estimating its resources, one must also take account of a considerable body of closely allied books frequently found in the larger law libraries, but in this case classified and shelved in other divisions of the Library of Congress. The explanation for this great collection and its encouraging present rate of growth is that it is endeavoring to respond to the urgent demands of the large group of federal officials in Washington. While this is its primary objective, we must not overlook its importance from the standpoint of research for it is one of the many collections that are together making Washington a really great research center.

Lack of space obviously prevents the specific enu-

2. These and all other figures relating to the law libraries of the United States are taken from tables based upon the figures in the lists of law libraries appearing in the *Standard Legal Directory* for the years 1924, 1930 and 1934, supplemented by data obtained directly by correspondence where it was needed to suply omissions and correct errors. While a careful study of the figures appearing in the lists in the *Standard Legal Directory* revealed that they were not always "statistically" accurate, it is believed that because of extensive rechecking and correcting the final tables have been rendered sufficiently accurate to support the general statements that appear in this article. All figures include libraries whose use is restricted to members but omit private law libraries.

3. Where the exact number of libraries is not given the specific information is not available. The percentages indicated are, however, in all probability substantially correct.

meration of all of the larger law libraries. To single out a few is to do an injustice to others of equal distinction. We must therefore hereafter confine ourselves to much more general statements. We have noted that the greatest collection owes its existence to the needs of legal education and research while the second largest has come into being primarily to meet the needs of public officials. Suffice it to add that of the ten additional libraries containing more than 100,000 volumes, four are law school libraries; two are bar association libraries; two are state law libraries; one is a federal departmental library and one is a state departmental library. These figures seem to indicate clearly that size is not necessarily due to particular objectives but may on occasion result from the presence of any one of them alone, or because of a combination of several.

We have now considered the twelve largest law libraries in this country, all containing more than 100,000 bound volumes. Fifty-four additional libraries have between 50,000 and 100,000 volumes each. Of these, twelve are legal collections in state libraries, eleven are court libraries and ten are bar and library association libraries. There are also eight for each of two classes, namely, state law libraries and law school libraries, as well as four county law libraries and one federal departmental library.

So much for the larger libraries. Some interesting facts about the remaining 539 libraries can be quite briefly set forth. There are 64 libraries having collections between 25,000 and 50,000 volumes and 149 having 10,000 to 25,000 volumes. At the bottom, when considered from the standpoint of size, are 325 libraries, a little more than one-half the total for the nation, which have less than 10,000 volumes, or the minimum required by the Association of American Law Schools for the libraries of its member schools.[4] Of these libraries, 261 have collections of less than 7,500 volumes or the minimum set by the American Bar Association for libraries of law schools receiving its approval.[5]

While size is obviously only one of the factors to be considered in evaluating a library, the fact remains that it is one that has been stressed by both of the above associations in arriving at minimum standards to be applied to law schools receiving their approval. Although the adequacy of such standards may well be called in question we shall not now do so as we are primarily concerned with a statement of facts. However, it should be noted that the American Bar Association has not changed this requirement since it was adopted in 1928.[6] The Association of American Law Schools raised its minimum from 7,500 volumes to 10,000 in 1932.[7]

It goes without saying that thousands of the applicants for admission to the bar are being trained under conditions where such minimum collections are not conveniently available. That this is also true of a considerable proportion of those in active practice is a foregone conclusion. We can hardly avoid propounding a question which we will not now attempt to answer, namely, can a practitioner successfully protect the interests of his clients without convenient access to a collection which is regarded as the minimum which must be available for his training to enter the legal profession? Certainly a collection of 10,000 volumes will not ordinarily permit the inclusion of much material of purely "academic" and "theoretical" interest. In whatever manner we may answer the above question, the fact remains that 43% of our law libraries fall short of the modest standard established by the American Bar Association and more than one-half of them fail to comply with the standard approved by the Association of American Law Schools. And it can hardly be said that there are too many of these libraries for in the last decade 97 more have been established, which would seem to indicate that each has been the outgrowth of a particular need.

It is so customary, in inquiries such as we are pursuing, to make comparisons between the 48 states that we would also be tempted to do so, were it not for the fact that conditions between them differ so greatly that comparative figures are misleading unless account is taken of too many factors to be considered at this time. Let us therefore content ourselves with some significant comparisons between conditions in our larger urban centers as distinguished from the remainder of the country.

As there is no reliable information with respect to the number of lawyers and their distribution subsequent to 1930, comparisons will be made as of that year. At this time there were 160,605 lawyers[8] in the United States and the law libraries of the country together contained 9,775,548 bound volumes. These figures give an average for the whole country of 61 volumes per lawyer.

Commencing with these figures we may make some comparisons between library conditions in the large urban centers and the remainder of the country. In 1930 there were 72,170 lawyers in cities having populations of 100,000 or more while these cities together contained legal collections with an estimated total of 6,073,423 volumes. In other words, 45% of the lawyers by being in large urban communities were in convenient proximity to 62% of the total number of law books. In the remainder of the country there were 88,435 lawyers whose law libraries together contained 3,702,125 volumes. Thus 55% of the lawyers, located outside of the larger cities, had available only 38% of the total number of law books in the nation. Carrying the comparison one step further we find that the superior facilities, of the lawyer in the larger cities, is also demonstrated by the fact that on an average he had available 84 volumes per lawyer, or exactly twice the average for the remainder of the country which was 42. Urban lawyers, however, have another obvious advantage since the cities usually have their books concentrated in reasonably large collections while the law book resources of the smaller cities and suburban areas are generally distributed between more modest and inadequate collections which are, nevertheless, called upon to serve the needs of extensive areas.

Having established the above correlations we may now proceed to avail ourselves of such information as we have to assist us in determining present trends. Unfortunately, all of the required figures are not available

4. See Article 6, Section 6 of Articles of Association. 1934 *Handbook of Association of American Law Schools*, p. 251; Reed, *Annual Review of Legal Education in the United States and Canada for the year* 1934, p. 70.

5. See Resolution (C) and the Council ruling thereunder. Reed, *Annual Review of Legal Education in the United States and Canada for the year* 1934, p. 68. According to a letter from Mr. Will Shafroth, Adviser of the Section of Legal Education and Admissions to the Bar, of the American Bar Association, the ruling requiring a library of 7,500 volumes was adopted by the Council on April 12, 1928. Resolution (C) was originally adopted in 1921. See (1921) 46 A.B.A. Reports 38.

6. See note 5, supra.

7. See note 4, supra.

8. All figures relating to the number of lawyers and their distribution are taken from the United States Census for 1920 and 1930.

for the same decade. We must, therefore, in considering the growth of the legal profession, make use of figures for the 1920-1930 decade while for their libraries we must draw on the figures for the ten years from 1924-1934. By so doing we find that during the 1920-1930 decade the number of lawyers in the United States increased from 122,519 to 160,605, or 31% (as against 16% for the total population) while the increase in the number of law books from 1924 to 1934 was from 7,393,983 to 11,742,803, or 59%. These figures clearly indicate that the legal collections are increasing at a more rapid rate than that of the profession itself. While some encouragement may be drawn from such a fact one may as logically conclude that there was a serious shortage of law books in 1924 and the present trend merely reflects an effort to overcome it. In fact it is altogether probable that this is a partial explanation, but we must not overlook the fact that the constantly increasing number of statutes, decisions, treatises, periodicals, and other law books coming from the press contribute greatly to the increasing "need" for such additional material. When we consider the ever widening application of the law to new fields of human endeavor supplementing the obvious necessity of preserving the earlier volumes of statutes and decisions we may on this ground alone very well ponder the question of whether the legal profession is keeping abreast of its needs in the development of its libraries. Finally, we may at least hope and expect that contemporary efforts directed to the raising of the standards of legal education and admission to the bar are also creating a more generally felt demand for adequate libraries.

The assumed drift of lawyers toward the larger urban centers is not as great as is generally believed and it is apparently not reflected in the development of law libraries, as is indicated by the following: The movement of lawyers to the larger cities (those with populations of 100,000 or more in 1930) is represented by the fact that 51,320, or 42% of the total were located in such cities in 1920, while 72,170, or 45%, were so located in 1930.[9] On the other hand, the development of the book collections shows a slightly contrary movement. This is indicated by the fact that 4,623,564 volumes, or 62.5% of the total were in these cities in 1924 and 7,157,250, or 60.9% of the total were so located in 1934. Apparently the smaller cities are making some headway. This is more obvious when we take into account the fact that the latter commenced the decade under consideration with more meager collections than those possessed by the larger cities. Thus, while the cities with populations of more than 100,000 persons together added an average of 251,409 volumes per year as compared with the average yearly growth of 183,472 volumes for the smaller communities, the collections in the large cities made a combined total growth for the ten year period of 54% while the similar growth of the libraries in the smaller communities was 66%. The total growth for the nation was 4,348,820 volumes, or an average of 434,882 volumes per year and represents an increase of 59% for the decade.

However, it is clear that comparisons between percentages as above computed must be used with the greatest caution. Nothing is more obvious than that the library resources of the lawyers located in the larger cities are as a whole far superior to the resources of those located in other parts of the country. Whether or not the indicated slight improvement in the smaller communities will continue cannot now be determined. It is certainly to be hoped that it may, for nothing is clearer than the fact that a substantial proportion of the members of the legal profession practice in communities which do not maintain adequate law library facilities.

In the foregoing pages we have quite obviously limited our considerations to several of the many aspects of law library development and administration. We have said nothing of the buildings in which they are housed, of other physical facilities, or of the librarians and their assistants who administer them. While we have spoken much of law books, we have not concerned ourselves with the contents of the books in general nor with the intrinsic merits of particular books and collections. Yet all of these are factors of the greatest moment. To convey the impression that the merits of any collection are to be determined merely by considering its size would indeed be unfortunate. It therefore seems fitting to close by pointing out that the legal profession may well be proud of many of its libraries both large and small. To state that American lawyers have assembled the greatest legal professional collections in the world is no mean tribute, and many of the less extensive libraries are effectively serving the lawyers in their communities.

However, the fact remains that present conditions in many parts of the country are a challenge not only to the lawyers in these communities but to the profession as a whole. Has not the time come for a concerted movement dedicated to the end that all lawyers, who have from time immemorial been wont to call themselves members of a learned profession, shall be equipped with an adequate supply of law books—the indispensable "tools" of every practitioner worthy of the confidence of his clients, and competent to be an officer of the courts? Do we not need a more general distribution of library facilities? Law librarians, and the staffs that support them, undoubtedly believe that this question can only be answered in the affirmative. Without doubt the primary responsibility rests upon them, but they require and are entitled to the interested and active support of the profession as a whole, both in seeing to it that each new appointee to a law library staff is qualified for his work and by insisting that their libraries be supplied with the facilities and resources needed for the development of such a library service as the legal profession should maintain.

9. For tables and discussions relating to the distribution of lawyers see *Early Returns of the* 1930 *Census Regarding the Legal Profession, Lawyers per Unit of Population,* and *Some Random Thoughts About the Lawyer—Population Tables* in (1931-32) 1 The Bar Examiner 88, 252, 255.

Signed Articles

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