JAMES HUGHES: KENTUCKY'S FIRST NOMINATIVE REPORTER

by
Kurt X. Metzmeier


The legal system of the new state of Kentucky was birthed in 1792 amidst a thicket of thorny disputes over confused land claims, fuzzy boundaries and unsettled law. Into this wilderness stepped James Hughes, who drafted laws to reform the muddled property laws inherited from Virginia and litigated the myriad land cases that clogged the new commonwealth’s courts. While waiting to have his many cases heard in the Kentucky Court of Appeals, he took detailed notes on the cases before him. To these accounts, he added notes for his own arguments and similar notes from his friend George Nicholas, and from these scraps of foolscap, Hughes fashioned the first case reporter for the state of Kentucky, HUGHES REPORTS. The work—not surprisingly—dealt entirely with land law. The finished octavo volume is beautiful; filled with detailed engravings by the artful silversmith who would later design the seal of the commonwealth of Kentucky. Alas, the splendid tome was a financial bust. Like many similar projects financed by subscription, it

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ONLINE RESOURCES FOR RARE BOOK CATALOGERS

by
Sarah Yates

Readers of LH&RB know as well as anyone that not all information can be found on the Internet. And yet, we are not immune to its lure. Unless you are reading a hardcopy version of this newsletter that a colleague has printed out for you because you are known never to touch a computer, this mean you.

Here, then, are some online resources that may be helpful for catalogers of rare law materials.

General Resources

Directory of Web Resources for the Rare Materials Cataloger
http://lib.nmsu.edu/rarecat/

This website, sponsored by the RBMS Bibliographic Standards Committee (http://www.folger.edu/bsc/index.html), is a great place to start, whether you are new to rare book cataloging or just need help with a new or unusual aspect of rare book cataloging. The site links to everything from general cataloging sites (and a separate section just on Library of Congress resources) to reference sites (further subdivided into “General,” “Language Resources,” “Biography Sites,” “Place Names,” and “Calendars and Computus” sections) to some very specialized rare books sites. The “Images of Rare Books” section contains some fun sites that are

Continued on page 8 ONLINE RESOURCES
fell prey to the state's volatile population; pledged buyers had either followed the expanding frontier or experienced a cruel change of fortunes. Nonetheless, it struck a path that would be followed by others.

Hughes Reports Title Page

The career of Kentucky's first law reporter spanned the state's transition from its early existence as a frontier territory of Virginia to that a thriving new commonwealth. Little is known of James Hughes' early life, but his contemporaries report that he was born in England and immigrated to Kentucky in his youth. His date of birth is unknown, but at his death in 1818 he was counted among the generation of George Nicholas (1754-1799) and John Breckinridge (1760-1806). Referred to as a barrister by his contemporaries, it is possible that received his legal training in one of London's Inns of Court.

Hughes spent the large part of his productive life in Lexington. In 1788, he helped organize the Lexington Light Infantry and in 1789 Lieutenant Hughes was promoted to captain and given command. Although the unit was by mid-century mostly known for its smart
uniforms and crisp parade drills (both of which soon wilted in the gunsmoke and gore of the Civil War), back in the 1780s the still potent threat of Shawnee raiders gave the Light Infantry a very real purpose. In 1793 Hughes was elected trustee of the city for the first time; he would be returned four more times and in 1795 served as chairman. He also represented Fayette County in the Kentucky House of Representatives from 1793 to 1797 and from 1801–1803.

Hughes was active in the city’s social and cultural affairs, supporting the building of a public library and encouraging the growth of educational institutions as the city grew from a frontier outpost into the Athens of the West. Politically, James Hughes embraced the democratic ideals of his friends Nicholas, Breckinridge and John Bradford, publisher of the KENTUCKY GAZETTE. Hughes, Breckinridge and Bradford joined with the brothers Robert and Thomas Todd to found the Democratic Society of Kentucky, which advocated the end of slavery, fought for free navigation of the Mississippi River, and supported the presidential campaign of Thomas Jefferson.

Despite his political and civic activities, it is as one of the state’s foremost lawyers and legal scholars that Hughes was best known to his contemporaries. He was one of the leading appellate lawyers of his day. In 1811 Hughes moved to Frankfort where he continued to apply his considerable forensic skills in the state capitol. He was an expert in the law of property and was especially adept at navigating the tangle of land titles that the Kentucky inherited from its time as territory of Virginia.

The Old Dominion’s colonial and republican governors had dispensed willy-nilly land patents on the Kentucky frontier to veterans of the French and Indian and Revolutionary Wars. The patents did not convey land itself but only the right to enter, survey and record claims to land. If any of these steps were faulty, the title was not perfected. This, along with poor surveying and some chicanery by some land speculators, left the Kentucky territory’s land titles in a mess of overlapping claims. The resulting chaos filled the new state’s courts with lawsuits. As a legislator, Hughes was able to rewrite Kentucky’s land laws to alleviate some of the problems, but most of the damage had been done. He would spend many hours arguing the land claims of his clients before the Court of Appeals, Kentucky’s first court of last resort. He was not blind to the advantages his vast knowledge gave him in the “great game” of land speculation and soon acquired land holdings around the state.

Beloved and respected in his time, James Hughes would nonetheless be unknown in ours but for his single volume of law reports, which inaugurated case law reporting in the commonwealth of Kentucky. Covering the years 1785–1801, the reports recount judicial decisions of the numerous land cases that clogged Kentucky court dockets before and after statehood. In many of the cases Hughes was also engaged as an advocate; in others he made good use of the time that lawyers of his day spent lingering in courtroom listening to colleagues argue their cases while they waited for their own matters to come before the court.

In his preface, Hughes notes that the work “was undertaken by Thomas Todd and the author jointly,” and knowing the work was going to be expensive, the two men agreed to “join in the expense and risk” of the project, which was to be partially funded by subscription. A “different arrangement” was later made and, with Todd’s assent, Hughes published the work at his own risk. As Todd and Hughes appear to have remained friends, it is possible that Todd’s elevation in 1801 to the Court of Appeals caused him to withdraw. Todd was later named chief justice
of that court in 1806 and in 1807 was appointed by President Thomas Jefferson to the United States Supreme Court. Or perhaps Todd was a shrewder investor; in the introduction to his law reports, Martin D. Hardin says Hughes lost money on the book, something that discouraged the publication of law reports for nearly a decade.

*Flat Engraved by David Humphreys*

The volume by Hughes was 236 pages, exclusive of front matter, and contained 41 plats masterfully engraved by Lexington silversmith and engraver David Humphreys. In 1792, Humphreys had been paid twelve pounds sterling by the state legislature to create a state seal with the vague instruction that it show "two friends embracing, with the name of the state over their heads and around about the following motto: United we stand, divided we fall." His version depicted two men in formal dress; only later did one of the men take on the frontier garb and coonskin cap now found on the state seal and flag. Today, Humphries silver work is as highly regarded as his engraving.

The reports were printed by Hughes’ close friend, John Bradford. Bradford was the pioneer printer of the state. Anticipating that the new state would need a state printer, the intrepid entrepreneur had bought a press in Pittsburgh and carried it by raft down the Ohio and overland from Maysville to Lexington over the buffalo trace that would later become the Maysville Turnpike. Bradford thus received the contract to print the acts and journals of the new state legislature when it began work in 1792, published the leading newspaper, the KENTUCKY GAZETTE, as well many early law books, including the first collection of statutes.

Few will see the elegance of the original work, which counts as among the rarest of law books. Most libraries carrying KENTUCKY REPORTS have the 1869 "century edition" by Cincinnati publisher Robert Clarke & Company. Hughes’ work, numbered as 1 Ky., was re-set by Clarke in a more uniform typeface and the plats re-engraved to fit a smaller, but more standard, 22 x 14 cm page size (compared with the 20 x 25 cm original). The reconfiguration dramatically changed the pagination and the Clarke volume ballooned to 458 pages.

Hughes’ first volume of cases would be his last. No doubt he decided that the practice of law, land speculation—even a game of vingt-et-un with his friend Henry Clay—was a better gamble than law publishing. After a successful career, Hughes died in 1818 and was mourned by his contemporaries. But he will be forever remembered for the beautiful, squarish volume that started case law reporting in Kentucky, HUGHES REPORTS.

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Kurt X. Metzmeier
University of Louisville
Louis D. Brandeis School of Law

NOTES


2. Id.

3. Id.


5. KY. GAZETTE, Jan. 24, 1795; KY. GAZETTE, Jan. 9, 1796.

7. He was a supporter of Lexington’s first library, KY. GAZETTE, FEB. 18, 1812, and a trustee of the Transylvania University, 2 COLLINS, HISTORY OF KENTUCKY 511.


10. KY. GAZETTE, Oct. 15, 1811.


15. Id.


17. Preface, MARTIN D. HARDIN. REPORTS OF CASES ARGUED AND ADJUDGED IN THE COURT OF APPEALS OF KENTUCKY FROM SPRING TERM 1805 TO SPRING TERM 1808 INCLUSIVE (Frankfort [Ky.]: Printed by Johnston and Pleasants for the author, 1810).


25. Vingt-et-un was an early version of the card game we today call blackjack. Henry Clay was a notoriously proficient card player, so this would be a risky venture. See STEVEN LUBET, LAWYERS’ POKER: 52 LESSONS
26. The Lexington bar passed a resolution in tribute to Hughes’ memory that resolved that the legal community would “for one month wear black crepe on the left arm.” *The Late Mr Hughes*, Ky. Gazette, Aug. 28, 1818.

**FROM THE CHAIR**

It has taken some time for me to compose this final newsletter article as the Chair of the Legal History and Rare Books SIS. Mark Podvia, our Newsletter Editor, can tell you he waited quite awhile for it! Some of this delay is my own busy schedule and trying to do too much at a time, as we all do. But I have also indulged myself in reflecting upon what we do as historians and law librarians, as well as thinking about how to encourage you to become more involved with the LH&RB SIS.

Many current law school curricula reveal an understanding that historical perspectives and research provide invaluable insights for the law student as well as better engage law professors and students in the public world. This understanding did not come easily. Forty years ago, Calvin Woodard bemoaned legal history’s seemingly unending fixation upon the progressive development of legal institutions, primarily medieval English legal institutions. He particularly noted the failure of traditional legal history survey courses to effectively illuminate for law students how the past shapes our present. “[L]law, our system of law, is more than the vector of so many mid-20th-century social forces rationalized in accordance with the personal preferences of so many contemporary judges and legislators. The need is real; only some sense of history can fulfill it; hence ... we should make every effort to give history a more positive place in legal education than it currently holds.”

Woodard called for an expansion of topics within legal history courses and the inclusion of historical perspectives throughout the law school curriculum.

Twenty-five years ago, Stephen Presser argued legal history was finally gaining respectability with “the newly perceived, post-Watergate need for ethics in the law” and law students’ belief that “the perspective acquired in courses such as American history can contribute both a missing sense of community of endeavor and an antidote to the cynical instrumentalism that so often prevails in law schools.” He argued American law encompassed four core values: the rule of law, popular sovereignty, the maintenance of economic opportunity and social mobility, and the protection and promotion of private interests and initiatives. Presser provided an excellent window into the historian’s craft in his discussion of how the conservative, Wisconsin, radical transformation and heroic schools of American legal historiography examined these core values, as well as how Anglo-American history could be integrated into specific law school courses.

Thirteen years ago, *The Journal of American History* (JAH) published a special issue on the “practice of American history” that reported on JAH readers’ responses to a survey, as well as presented articles by “practitioners to address issues raised by the readers and to share their experiences and perspectives on the practice of American history.” Several practitioner comments are relevant to understanding the value of legal history, particularly in regards to engagement with the public world. Henry Glassie asserted “[t]he transformational sequence in historical awareness steps from query to explanation, from understanding through validation to commitment. It is history’s purpose to preserve things that prompt questions as much as to supply answers that inspire action.”

Michael Cassity suggested “historians can make more of a contribution to the public purpose by connecting past and present at critical points and, moreover, ... we can bring history to bear on public issues in the public forum, and in so doing we can find greater personal satisfaction and fulfill our vision of the contribution that history can make to society.” Myron Marty asked “why do we study history if we do not expect to learn from it? We learn, first, the importance
of not being misled by seemingly plausible historical analogies, but beyond this we learn by putting ourselves in the place of persons in the past, trying to grasp what it was like to have been there.\textsuperscript{59}

You and I are members of the law school academy and community. We contribute to law school curricula and law practice, be it on a formal or informal basis, via teaching a full course, presenting a lecture, researching, or collection development. We have a responsibility to engage our professors, students, and practitioners with our historical perspective and understanding. We also have a responsibility to contribute to our practice. Yes, everyone is incredibly busy, and it seems like it just isn’t getting any easier to stay above water. In addition to keeping up with work, family needs, and life in general, who has the time or financial resources to write books or articles, present at meetings, or volunteer to help run the business of a professional association? But maybe you could find the time and resources to do just one of these things. It may be hard to believe, but writing, presenting, and volunteering each have their unique rewards. They may leave you a little tired, but they will also leave you with a great deal of satisfaction.

No matter what your “job” is, you can make your own “career.” If you don’t have the authorization or opportunity to write or present or work with who you want to, try doing this with your professional association colleagues. The Legal History and Rare Books SIS is always seeking new ideas and volunteers, as well as provides an opportunity to develop leadership skills. Serving as the 2005-2007 LH&RB SIS Chair has been a wonderful experience for me, and I look forward to continuing as the Education Coordinator. This year, I hope you will consider becoming more involved in SIS programming and other activities. I am confident you will enjoy the experience.

Hope to see you in New Orleans,

--Laura E. Ray

\textbf{NOTES}


\textbf{Legal History & Rare Books SIS 2006-2007 Officers}

Chair: Laura E. Ray
Educational Programming Librarian
Cleveland-Marshall College of Law Library
Cleveland State University
1801 Euclid Avenue
Phone: (216) 687-6880/Fax: (216) 687-5098
Email: laura.ray@law.csuohio.edu

Vice Chair/Chair Elect: Karen Beck
Curator of Rare Books/Collection Development Librarian
Boston College Law Library
885 Centre Street
Newton, MA 02459
Phone: (617) 552-8607/Fax: (617) 552-2889
Email: beckka@bc.edu

Secretary/Treasurer: Sarah Yates
Cataloging Librarian
University of Minnesota Law Library
229 19th Ave. S.
Minneapolis, MN 55455
Phone: (612) 625-1898/Fax: (612) 625-3478
Email: yates006@tc.umn.edu
probably not directly related to many law catalogers' work but are worth a look anyway. (Two of my favorites are Dime Novels and Penny Dreadfuls [http://www-sul.stanford.edu/depts/dp/pennies/home.html] and the not-quite-so-off-topic An American Time Capsule: Three Centuries of Broadsides and Other Printed Ephemera [http://memory.loc.gov/ammem/rbpehtml/rbhome.html].) The directory was created in 1997, but it has been kept current, and dead links are rare.

Cataloger's Desktop
http://desktop.loc.gov/

This is a subscription resource. If your institution provides access to it, by all means poke around. (And if your institution doesn't provide it, you might want to consider advocating for it.) All the standard cataloging tools are here (Anglo-American Cataloguing Rules (ACCR), Library of Congress Rule Interpretations, MARC manuals, etc.), as well as some tools specific to rare books. Descriptive Cataloging of Rare Materials (Books) (DCRM(B)) is now available here; it is not available for free on the Internet. (RBMS's DCRM(B) page no longer even contains links to drafts of the manual, but it does contain information about the revision and the revision process [http://www.folger.edu/bsc/dcrb/dcrtxt.html].) Also of interest to rare book catalogers and not available elsewhere online is Standard Citation Forms for Rare Book Cataloging.

AALL Sites

Legal History & Rare Books SIS
http://www.aallnet.org/sis/lhrb/

You already know about this site if you're reading this newsletter, but it would be remiss of me not to include it. The main LHRB-SIS page contains links to information on SIS-sponsored meetings and programs at the AALL Annual Meeting, legal history links, and all past and current issues of LHRB.

TS-SIS: Technical Services Special Interest Section
http://www.aallnet.org/sis/tssis/index.htm

This site hosts the archives for the newsletter TSLL, which is one of the greatest resources for law catalogers. The "Resources" section has links to a lot of other helpful information as well, including the TS-SIS annual meeting blog, reports of law representatives to national cataloging committees, and some general cataloging resources.

Catalogs

English Short Title Catalogue
http://estc.bl.uk/F/?func=file&file_name=login-bl-list

ESTC online is now hosted by the British Library and is freely available for the first time. "The 'English Short Title Catalogue' (ESTC) is a comprehensive, international union catalogue listing early books, serials, newspapers and selected ephemera printed before 1800. It contains catalogue entries for items issued in Britain, Ireland, Overseas territories under British colonial rule, and the United States. Also included is material printed elsewhere which contains significant text in English, Welsh, Irish or Gaelic, as well as any book falsely claiming to have been printed in London." The notes found in ESTC records are often more helpful than notes found in records in RLIN or OCLC.

Library of Congress Online Catalog
http://catalog.loc.gov/

Don't overlook LC's own catalog just because you have already searched for a title in OCLC and/or RLIN. Many records from the "old catalog" are not in the utilities but are available at the above URL. You can also switch from the catalog to Library of Congress Authorities [http://authorities.loc.gov/] and back again by clicking the links in the upper right corners of the pages.
E-mail List Archives

Exlibris
http://palimpsest.stanford.edu/byform/mailling-lists/exlibrias/

Exlibris is "an electronic news and discussion group for those interested in rare books, manuscripts, special collections, and librarianship in special collections." Scroll down to about the bottom quarter of the page for information on joining the list.

Archives of AUTOCAT@LISTSERV.SYR.EDU
http://listserv.syr.edu/archives/autocat.html

Autocat is a high-traffic, general cataloging e-mail list. You must be a subscriber in order to search the archives. The archives page also includes information on how to join the list. If you want to subscribe just for the searching privileges but don\'t want to be deluged with e-mail, set your subscription to nomail (or to index or digest if you want to get all the messages, but only once a day).

Rare Book Cataloging Policies

UIUC Rare Book Cataloging Policy

The University of Illinois at Urbana-Champaign has a very thorough rare book cataloging policy, which could give you some good ideas if you are trying to write a policy for your own institution. The document also contains a helpful summary of DCRB (it has not been updated since the publication of DCRM(B)) rules, especially those that differ from AACR rules.

Beinecke Cataloging Manual for Printed Material
http://www.library.yale.edu/BeinCatM/contents.html

Yale\'s rare book cataloging manual is even more comprehensive than UIUC\'s; it contains instructions for just about any rare book cataloging situation that might occur. All this information might be overwhelming for libraries with smaller rare/special collections, but it is well organized so you can easily click on only the sections of the manual that are relevant for your needs.

Rare Book Cataloging Thesauri and Lists

RBMS Controlled Vocabularies for Use in Rare Book and Special Collections Cataloging
http://library.osu.edu/sites/users/russell.363/RBMS%20Thesauri/index.htm

Here are thesauri that "provide standardized vocabulary for retrieving special collections materials by form, genre, or by various physical characteristics that are typically of interest to researchers and special collections librarians." You will find links to Binding Terms, Genre Terms, Paper Terms, Printing & Publishing Terms, Provenance Evidence Terms, and Type Terms.

Relator Terms
http://www.folger.edu/bsc/relators.html

"Relator terms are used at the end of certain access points in catalog records and specify the relationship of the person or body in the access point to the item cataloged....This is a list of relator terms maintained by the Bibliographic Standards Committee of the Rare Books and Manuscripts Section of the Association of College and Research Libraries for use in rare material, manuscript, and special collections." The page also links to MARC Code Lists for Relators, Sources, Description Conventions (http://www.loc.gov/marc/relators/), which is maintained by the Library of Congress.

Naturally, this list is not comprehensive. A Google search for "rare book cataloging" (in quotation marks) yields 12,000 hits, as of this writing. (However, the same search in Wikipedia, even without quotation marks, yields no matches.) If I have omitted your favorite rare book cataloging website, send me an e-mail at yates005@umn.edu and I will include it in a future column.

-Sarah Yates
University of Minnesota
Law Library
Editor’s Corner

First, I would like to thank Jennie Meade and Kurt Metzmeier for agreeing to serve as Articles Editors for LH&RB. Please keep them very busy by sending them submissions for inclusion in LH&RB.

On this page you will find a listing of our LH&RB programs for the 2007 Annual Meeting. I would like to suggest another program for you to add to your list—Newsletters, Blogs, and E-mail Alerts. I offer this suggestion because at some point in the future we will need someone new to edit LH&RB [no need to panic Karen and Stacy—I don’t plan on retiring as editor anytime soon]. This program, sponsored by the Council of Newsletter Editors, promises to be an excellent training course.

As this issue goes to press several of our members are in Malmö, Sweden, for an International Symposium on Rare Law Books, Law Book Collections and Libraries, To Collect the Minds of the Law We will have a full report of the symposium in our next issue.

The deadline for the Fall issue of LH&RB is October 29th. Please send us your articles and book reviews, as well as updates on happenings in your library.

I will look forward to seeing you in the Big Easy!

--Mark W. Podvia

LH&RB Programs and Activities at 2007 AALL Annual Meeting

The Legal History and Rare Books SIS is pleased to be sponsoring two formal programs, co-sponsoring one formal program, presenting our annual Roundtable, and conducting our annual Business Meeting at the 2007 AALL Annual Meeting. Below is a chronological listing of our activities.

On Sunday, July 15th, at 1:30pm, Taking Up the Gauntlet: the Duel in Southern Legal History will feature Bertram Wyatt-Brown, the Richard J. Milbauer Emeritus Professor of History at the University of Florida and a leading historian of the American South. Dr. Wyatt-Brown will discuss the history of the duel, how the duel of honor became entrenched in Southern culture, why it flourished, and how it died. This program will be coordinated and moderated by Jennie Meade, Rare Books Librarian at the George Washington University Jacob Burns Law Library.

The bulk of LH&RB SIS programming will be on Monday, July 16th. Starting at 8:45am, Rome: the Power of Film to Teach Foundations of Roman and Civil Law will demonstrate the educational opportunities afforded by audiovisual materials, as it draws upon the powerful images of the HBO series "Rome," to explain key elements of Roman Law. This program is being co-sponsored by the Micrographics/Audiovisual SIS and Foreign, Comparative & International Law SIS. It will be coordinated and moderated by Laura Ray, Educational Programming Librarian at the Cleveland-Marshall College of Law, and the speakers will be Bernard Keith Vetter, the Ted and Louana Frois Distinguished Professor of International Law Studies at the Loyola University New Orleans College of Law, and Dennis P. Kehoe, Professor at the Tulane University Department of Classical Studies.

Next, at 11:45am on Monday, the LH&RB SIS Roundtable will present Celebrating the 400th Anniversary of Cowell’s Interpreter. Joel Fishman, Assistant Director for Lawyer Services at the Duquesne University Center for Legal Information / Allegheny County Law Library, will coordinate this examination of the history of legal dictionaries in Anglo-American law and their use in legal literature, and the speakers will include Warren Billings, Professor of History, Emeritus, at the University of New Orleans. The LH&RB SIS Roundtable will not conflict with formal programs, and we plan to offer light refreshments.

Then, at 2:00pm on Monday, Huey Long, the Press, and the Fourteenth Amendment:
Louisiana's Contribution to Modern Constitutional Law will examine the unique situations and personalities that led to Louisiana legislation on the taxation of advertising in newspapers, as well as the Grosjean v. American Press Co. U.S. Supreme Court decision in reference to the modern development of freedom of the press in the United States. This program will be coordinated by Etheldra Scoggins, Reference Librarian and Associate Professor at the Loyola University New Orleans College of Law, moderated by Stacy Etheredge, Reference Librarian at the University of South Carolina School of Law, and the speakers will be James E. Vinator, Associate Professor of Law at the Loyola University New Orleans College of Law, Michael L. Kurtz, Dean of the Graduate School and Professor of History at Southeastern Louisiana University, and Richard D. White, Professor of Public Administration at Louisiana State University.

Finally, current members and those interesting in becoming members, should plan to attend the LH&RB SIS Business Meeting on Tuesday, July 17th, at 4:15pm. Here we will review LH&RB SIS projects and programs as well as discuss educational programs for the 2008 AALL Annual Meeting. Hope to see you at all of our SIS activities in New Orleans!

--Laura E. Ray

Portions of this article were previously published in the May 2007 issues of AALL Spectrum.

Rare Book Cataloging Roundtable

The Technical Services SIS is hosting a Rare Book Cataloging Roundtable on Saturday, July 14, 2007, from 5:30 to 6:30 p.m. Check the AALL Annual Meeting Final Program for room assignment.

The Rare Book Cataloging Roundtable serves as a forum for the discussion of issues associated with the cataloging of rare materials and special collections, including national cataloging standards and their application to legal materials, as well as specific concerns of members relating to the cataloging of their institutions' rare and special collections.

Whether you are a longtime rare book cataloger or someone with no experience in the area but a desire to learn about something new, please join us for an hour of lively conversation. You need not be a member of TS-SIS to attend.

For further information, or to suggest topics you would like to discuss at the roundtable, contact Sarah Yates: yates006@umn.edu or 612-625-1898.

--Sarah Yates
University of Minnesota
Law Library

Tarlton Publishes Three New Oral Histories

The Tarlton Law Library is pleased to announce it has added three new oral history publications as part of the Tarlton Law Library Oral History Series. These publications help to document the history of the University of Texas School of Law and the legal history of Texas and the United States. One of the oral histories is of a long-time faculty member of the law school, Russell J. Weintraub, while the other two are of distinguished alumni, James DeAnda and Oscar Mauzy.


James DeAnda (1925-2006) became the second Mexican-American federal judge in the U.S. when he was appointed to the bench by President Carter in 1979. DeAnda was also a trailblazer for civil rights, working on several important cases involving school discrimination and desegregation, including Hernandez v. Texas (1954), which gave Mexican Americans the right to serve on juries. DeAnda was a practicing attorney in Houston and later Corpus Christi, Texas, and later served on the federal bench in Houston for thirteen years. DeAnda was also a co-founder of the Mexican-American Legal
Defense and Education Fund, and was active with the American GI Forum, the League of United Latin American Citizens, and created Texas Rural Legal Aid in 1970 (now Texas Rio Grande Legal Aid).

In this publication, based on a speech by Judge De Anda given to the Chicano/Hispanic Law Students Association at the University of Texas School of Law in April 2000, he discusses his struggles in law school, his work on important school discrimination and segregation cases, minorities in the legal profession, and his time on the federal bench.


Russell J. Weintraub has been a faculty member at the University of Texas School of Law for over 40 years (1965- ), where he now holds the Ben H. & Kitty King Powell Chair Emeritus in Business and Commercial Law. He is a nationally recognized expert in the conflict of laws, a member of the prestigious American Law Institute, and a prolific author. He has also taught, in addition to conflicts, international litigation, commercial law and contracts and won several teaching awards and certificates of merit from the Texas and American bar associations.

In this oral history, Professor Weintraub talks about growing up in New York City, his attendance at Harvard Law School, including his post-graduate teaching fellowship, his early teaching career at the University of Iowa Law School, as well as his long tenure at the University of Texas School of Law. He also discusses some of the important consulting work he has done during his career, which included pro bono work for the Texas State Legislature, as well as work for private firms, including the Howard Hughes estate case.


Oscar H. Mauzy (1926-2000), graduated from the University of Texas as an undergraduate in 1950 and from the School of Law in 1952, before starting work as a labor lawyer in Dallas. From 1967 to 1986, he served as a Texas State Senator, and from 1987 to 1992, he served on the Texas Supreme Court. As a state senator, Mauzy co-sponsored the Texas Equal Rights Amendment in 1972, and later as a supreme court justice he authored the unanimous opinion in Edgewood ISD v. Kirby (1989), which ruled the then present Texas public school finance system unconstitutional.

In this oral history, Mauzy discusses his legal education at the University of Texas, including his law professors, law student life, and the integration of the law school following the U.S. Supreme Court's decision in Sweatt v. Painter (1950). He also discusses the decision in Hopwood v. Texas (1996), and his service as a Texas State Senator, including his efforts to promote minority recruitment at the law school in the 1960s. He also talks about his youth in Houston, his decision to become a lawyer, and his judicial philosophy.

These three publications now make a total of fourteen oral histories published by the Tarlton Law Library, with several others currently in the works. For information on these or other Tarlton publications contact the publications coordinator at tarltonbooks@law.utexas.edu or phone 512/471-7726.

--Mark Lambert, C.A.
Tarlton Law Library, Jamail Center for Legal Research
University of Texas School of Law

Book Reviews

Edited by Joel Fishman, Ph.D.


This is the tenth published volume in the
glacial progression of the Oliver Wendell Holmes Devise History of the Supreme Court of the United States, although it is number thirteen in the chronological sequence of the projected volumes. It is a welcome addition to the distinguished series, covering the period of Chief Justices Harlan Fiske Stone and Fred Vinson, and maintains the high quality of the best of the previous volumes. The two volumes for the period immediately preceding this one and the volume to follow this one are in preparation. Professor Wieck, the author of this volume, is a Professor of Law and a Professor of History at Syracuse University. He has a PhD in History from the University of Wisconsin and a law degree from the Harvard Law School. He is a highly respected legal historian and the author of several books and many articles in his field.

Most law librarians are familiar with the unhappy history of the Holmes Devise History, but I’ll recap it briefly. At his death in 1935, Justice Holmes left the residuary of his estate to the United States and, after a twenty year delay, Congress in 1955 created the Oliver Wendell Holmes Devise Fund and a Permanent Committee to use the Fund to prepare a history of the Supreme Court. The Committee was formed the next year, and the initial assumption of a single author was quickly dropped. Assignments were made (largely to academic scholars) of individual volumes in a chronological sequence by the successive chief justiceships. A contract for publication was made with Macmillan with (in view of the subsequent history) an absurd deadline of 1965. The volumes were to cover the period only through the period of Chief Justice Charles Evans Hughes, i.e., 1941, but in the early 1990s the coverage was extended to include through the end of the Warren Court (1969). So, this volume by Professor Wieck is not within the original scope of the project.

As most legal historians and many reference librarians now know, the value of the project goes far beyond that of a standard Supreme Court history. There are other histories of the Supreme Court, including histories of the period covered by this volume, but few that provide both the internal history of the Court (analysis of the decisions, studies of the individual judges, and dynamics of the decisional process) along with the external history (the outside forces operating on the Court and its decisions and the impact of the Court’s decisions (economic, political and social). The original general editor of the project, Professor Paul Freund, was quoted as saying that the history would not merely deal with the decided cases, but would be “history in the broad sense - dealing with the impact of the world upon the Supreme Court and the impact of the Court upon the world.” The focus of the volumes has changed somewhat over the years. While the early volumes tended, with some exceptions, to emphasize the internal history of the Court, beginning with volumes III and IV by G. Edward White on the second half of the John Marshall Court, a broader approach became apparent. Professor White’s volume and most of those that followed went beyond the internal approach of decisional analysis and viewed the Court in the light of the external forces operating on it and the impact that it had on the American society. For law librarians, virtually all of the volumes have been highly useful reference works in which the footnotes were treasure troves of citations to both primary and secondary sources on the internal and external aspects of the Court’s history.

This volume, by Professor Wieck, is very successful in combining both approaches - a keen analysis of the leading cases decided in its period and an expansive study of the context in which the Court functioned and the impact it had on the political, social and economic life of the country. The arrangement of the volume into six parts is basically by large themes, although Part I deals with the Roosevelt Court (i.e., the period from of Harlan Fiske Stone’s appointment as chief justice by President Roosevelt in 1941 to Stone’s death in 1946) and Part IV covers the Truman Court (i.e., from Fred Vinson’s appointment as chief justice by his friend, President Truman, in 1946, to Vinson’s death in September 1953). The themes of the other parts are as follows: Part II, First Amendment Rights; Part III, World War Two and the Constitution; Part V, the Cold War; and Part VI, Civil Rights.

Although these two chief justiceships were among the shortest in the history of the
Court and this period is usually considered much less significant than the Hughes Court which preceded it and the Warren Court which followed it, the author of this volume is very persuasive in highlighting its crucial importance. Wiecek's analysis shows how, despite increasingly sharp divisions among the justices, the Stone and Vinson Courts successfully consolidated and expanded the achievements of the later years of the Hughes Court and laid the groundwork for the dramatic liberal advances of the Warren Court that followed. As a result of Professor Wiecek's outstanding scholarship and readable style, this volume will make it difficult to underestimate the transitional importance of this period in the history of the Supreme Court. Among the secondary aspects of the volume which I found particularly helpful and praiseworthy were the beautifully written prologue, "First Monday 1941," and epilogue, "First Monday 1953," respectively setting the stage and summarizing the work; the numerous illustrations; and the first-rate indexing. The author concludes his epilogue and the book itself with these words which sum up the main theme of his work:

The Stone and Vinson Courts stood on the threshold of the modern constitutional era. American public law crossed over from classical legal thought, with its reassuring and deceptive promise of certitude, to the creative uncertainties of judicial activism in the Warren and Burger Courts.

This book is without question a major contribution to what has become the essential (although perhaps not always definitive) history of our Supreme Court.

--Morris L. Cohen
Professor of Law Emeritus
Yale Law School

NOTES

1. Volume X, covering 1921-30, is being prepared by Professor Robert Post of the Yale Law School, and Volume XI, covering 1930-41, is being prepared by Professor Richard D. Friedman of the University of Michigan Law School.

2. Volume XIII, covering the Warren Court, 1953-1969, is being prepared by Professor Morton Horwitz of the Harvard Law School. It is uncertain as to whether a further extension will be made to include the Burger Court.


4. At that time, it would be worth about $263,000, which today would be over three and a half million dollars.


The so-called Neutrality Crisis encompassed slightly more than a year, beginning with French minister Edmond Genet's sailing for the United States in February 1793 on the French naval frigate L'Embuscade commanded by Captain Jean-Baptiste Francois Bompard. It ended after a change of government in revolutionary France and the recall of Genet in February 1794. Long recognized as a significant political and diplomatic event in George Washington's presidency, the Crisis also provides important insights into the relationship between American foreign affairs policy and
constitutional government. Professor Casto's detailed and vigorously analytical discussion, both of the events and the pamphleteering debate between Alexander Hamilton and James Madison, represents a major contribution to our knowledge of this vitally important constitutional development. Ranging widely in its coverage, one of the volume's literary high points is a thrilling description of the see-saw naval battle between the French frigate L'Embuscada and the British warship Boston (125-137), reminding us that even such a fine scholarly book need not be dull reading.

Foreign affairs matters have always been clouded by serious separation of powers issues between the executive branch and Congress; also vaguely defined is the relationship between the president's diplomatic and war powers, and the assignment of declarations of war, and other disciplinary and fiscal oversight authority, to Congress. The judicial branch has played a modest and deferential role in this area, marked by Chief Justice Jay's refusal to provide advisory opinions concerning the Neutrality Crisis. Casto provides new insight into the Jay Court's rationale for non-interference, arguing that it was based as much on English judicial practice as it was upon separation of powers principles. He also comprehensively discusses the degree to which unilateral executive foreign affairs actions may create a political por practical estoppel to subsequent congressional action annulling or modifying earlier executive fiat. Moving beyond the Neutrality Crisis itself, the volume shows the degree to which the Pacificus pamphlets, written by Hamilton, and the 1952 opinion of Associate Justice Robert Jackson in the Youngstown Steel case (343 U.S. 579) have shaped constitutional law in this all-too-ambiguous area of governmental practice. There is an implicit suggestion that perhaps more active judicial involvement, both in providing advisory opinions, and in being less deferential to presidential initiatives, might have better served the national interest over the past two centuries.

Legal historians will be intrigued by Casto's demonstration of how litigation, and particularly jury verdicts, may be ineffectual as vehicles for the establishment of public policy. While the position is well supported, the discussion of jury verdicts may be flawed by Casto's conclusion that in eighteenth century colonial and early national America, juries decided matters of law as well as issues of fact. This form of jury nullification certainly did occur in the famous New York criminal libel trial of printer John Peter Zenger (1735), and there is evidence of local jury willfulness in the New England states and colonies, it is perhaps unwise to attribute these aberrations to the other American jurisdictions. Notwithstanding this minor caveat, this is a major contribution to constitutional and diplomatic history that must be read by all who teach, write, or practice in these areas.

--Herbert A. Johnson
Distinguished Professor of Law Emeritus
University of South Carolina


In The DeShaney Case, Lynne Curry analyzes the landmark case of Joshua DeShaney v. Winnebago County Department of Social Services. DeShaney asserted a civil rights claim against the county on the basis of the county's failure to protect him from abuse at his father's hand, although the county department of social services had opened a file on Joshua DeShaney and maintained an ongoing relationship with the child and his family. The controversial decision represents the triumph of the position that the Constitution is, in the words of Judge Posner, "a charter of negative rather than positive liberties."

Historian Curry puts DeShaney in historical context, analyzes the lower court decisions, considers the Supreme Court majority and dissenting opinions, and finally discusses the court of public opinion. She aims to raise questions about the disparity between the
individual reaction to instances of physical abuse and neglect of children and the societal choices that are made in response to child abuse.

Curry introduces her contribution to the Landmark Law Cases and American Society series by providing a quick overview of the book. After describing the trauma suffered by Joshua DeShaney, Curry takes readers through the development of parental rights within modern constitutional law. The introduction also provides a very brief and not too-technical description of the novel legal arguments that Joshua's attorneys presented on his behalf. Six chapters, a two-page chronology, and a bibliographic essay follow the introduction. The index, 12 pages, is helpful for researchers.

The narrative begins with a detached, almost clinical, description of Joshua DeShaney and his early life experiences. Curry gleaned information about Joshua's early life by reviewing police and court records, briefs, and interviewing participants. She describes for the reader in almost agonizing detail the series of contacts that Joshua and his father had with a Winnebago County social worker—from the first emergency room visit when the state of Wisconsin took emergency custody of Joshua to the final emergency room visit, when Joshua is brought to the hospital in a coma. This background is helpful for readers to consider as they later read the analysis of the district and appellate court opinions.

In the second chapter, Curry provides historical background for the modern child protection movement. This chapter is integral in providing readers with an understanding of the sometimes-conflicting goals that are faced by child protection workers: maintaining family units and protecting children from abusive parents. The history presents parallels to the ultimate question decided by the Supreme Court—whether a child has the right to be protected by the state from abuse by his parent.

Curry's presentation of the legal arguments is generally uncomplicated and accessible to non-legal scholar. For example, when explaining the circumstances of the criminal conviction of Joshua's father for child abuse, Curry clearly explains the terms of art "Alford plea" for lay readers. However, at times she oversimplifies, such as her explanation of the requirements for a claim under 42 U.S.C. §1983.

Although the tone of Curry's analysis of the Supreme Court opinion indicates that her sympathies were with the dissent, she clearly explains the legal position of the majority decision. The Due Process Clause of the Constitution, under the majority view, does not require the state to protect citizens from the actions of other citizens. Curry's discussion of the dissenting opinions presents the dissenting justices' legal arguments in straightforward manner. Readers will likely be intrigued by the discussion of the changes made in various drafts of the majority and dissenting opinions.

Curry's historical presentation, including detailed and compelling discussion of oral argument at the Court of Appeals and Supreme Court, will hold the attention of legal and non-legal readers alike. Readers will find the historical perspective enlightening, particularly given the depth of research reflected in The DeShaney Case.

--Margaret Butler
Reference Librarian
New York Law School


Rudolph Peters' Crime and Punishment in Islamic Law (Cambridge, 2006) is a history of the Shari 'a, Islamic law, from the Ottoman Empire through its eclipse in the nineteenth century. It is also an examination of the current practice of those states that have revived Islamic criminal law and punishment. Peters' book has been offered as a casebook, and in that capacity it has a great deal of
value. As an appendix, Peters has included a glossary of Arabic terms, consisting of the forms of punishment and and descriptions of classical jurisprudential theories. In addition, a section listing recommended further reading for each chapter will be beneficial to those requiring more study.

As Westerners, as Americans in particular, our knowledge of the Islamic world has been limited. The author is Professor of Islamic Law at Amsterdam University, and has written extensively on the subject, including a history of Jihad and on Shari’a in Northern Nigeria. He understands the conventional Anglo-American legal scholar’s gaps in understanding and has tried to convey the power and complexity of Islamic criminal law without unnecessarily obscuring matters. To this end, helpful geographical maps and charts have been added to the text. I suggest that another aid to comprehension would have been the inclusion of sections explaining the traditional division between Islamic criminal and civil/business law, which does not follow common-law practice at all.

In classical Islamic fiqh (jurisprudence), Peters describes the three chapters of criminal law, which are defined by the identity of the victim, the harm done, and whether the punishment is fixed in the Koran or is discretionary. The first involves offenses against persons, somewhat comparable to Western civil law. This is further divided into the two forms of punishment imposed: qisas—retaliation for crimes such as homicide or wounding; and financial compensation—diya. The second covers offenses against Allah and those mentioned in the Koran or hadith (words of the Prophet). These have mandatory fixed punishments (haddd):

1. theft (return of goods, amputation)
2. banditry (cross amputation, crucifixion, or banishment)
3. unlawful sexual intercourse (lapidation, banishment, or flogging)
4. unfounded accusation of 3. (flogging)
5. drinking alcohol (flogging)
6. apostasy—departure from Islamic religious practices (flogging, death by the sword)

The third area concerns punishments for other forbidden behavior, among them endangerment of public order or state security (ta’zir). Authorities are given wide discretion to enforce and penalize these offenses. With reference to both historical and contemporary cases, Peters communicates a sense of the multifaceted aspects of Islamic criminal law, particularly in the determination and carrying out of punishments. Despite the straightforward appearance of the haddd offenses, for instance, Peters cites to cases in which the punishments differ greatly from those stipulated.

Chapter 5, Islamic Criminal Law Today, is a thorough review of five of the seven nation-states which have revived Shari’a and the degree to which each have implemented it. These states, Saudi Arabia, Sudan, Iran, Pakistan, and the northern states of Nigeria, have restored Islamic criminal law mainly for political reasons, and have also come under scrutiny from the West for human rights violations. The criticism mainly derives from the valuation of women and non-Muslims in the law as half that of Muslim men; also in the use of crucifixion and lapidation (stoning) as punishments. In most Islamic legal jurisdictions, criminal responsibility begins at puberty, usually designated as nine for girls and 10 or 12 for boys; therefore capital punishment can be imposed on children, at least theoretically. In practice, crucifixion, stoning, and the execution of children has not been widely, if ever, reported in the past few decades. The response to the criticism has been that Western nations, including the United States, have imposed death sentences on minors, have tortured prisoners of war, and have had detainees in prison for years without requiring them to be charged. This does not bar criticism of the Islamic states, but neither does it help those states to form the political will to reform.

It is interesting to read this book after Saddam Hussein’s execution. Although the Constitution of the new Republic of Iraq explicitly recognizes Islam as the official religion of the Republic, it is widely believed that this is a concession to the majority Shitetes. Criminal justice under the current law is left to the provinces, and hanging is not a form of punishment mentioned in the
The reaction of many in Europe and the United States to the execution, however, shows that “Islamic justice” is seen as nearer to the Old West than to anything in our 21st Century law courts. Peters’ book should be read by anyone interested in testing that point of view.

--Janice Selberg
Director of the Law Library and Information Technology
Assistant Professor of Law
Ave Maria School of Law


The author of this work, John Fabian Witt, is Professor of Law and History at Columbia University. In this work, he sets out four “forgotten” stories of American history designed to illustrate his view of the United States as a unique nation-state founded and based on law. They touch upon such diverse topics as the role of Scottish Enlightenment thinking in the development of the United States, the pan-African nationalist movement, European-inspired cosmopolitanism, and the development of modern personal injury law.

In the first of the four stories, Witt relates the tale of a little known founding father whose personal, economic, and legal philosophies took him to the height of Associate Justice of the United States Supreme Court and to the depth of debtor’s prison. Witt posits that like the American legal profession generally, attorney James Wilson was a study in contrasts. Wilson was in his own way brilliant, but his views relating to “timeless rationality” and the rule of reason were not reflective of the prevailing philosophies of pluralism and the role of the common law. He was a signer of the Declaration of Independence; nonetheless, his home was attacked by rioters and militia during the Revolutionary War. An active delegate to the federal Constitutional Convention, he was appointed to the first United States Supreme Court. He also engaged in land speculation on a grand scale, speculation which ultimately ruined him. Wilson viewed his economic pursuits as being in the public’s interest; this view blinded him to the reality of the collapsing land market. Possibly saved from impeachment by his death in 1798; he died in North Carolina of malaria, spared the ignominy of death in a debtor’s prison by a last minute deal.

Wilson had lived his life expounding a theory of government based on Scottish Enlightenment thinking. He used the image of the pyramid as the embodiment of the concept of timeless reason. An idealist to the end, he never understood that the real image upon which American government functioned was the machine, never perfect, but always being adjusted and adapted. It is Witt’s position that, while lawyers rarely do well in revolutions, the adaptability of the profession in this country, like the adaptability of a machine and of American government, allowed lawyers to flourish even in revolutionary times. In the end, it was Wilson’s inability to adapt that led to his failure.

The second story presented is the story the Reverend Elias Hill, pan-African nationalism, and the Liberian emigration movement in the era of reconstruction. The story begins with a very interesting description of Hill’s upbringing and of the lives of slaves and “free” blacks in pre-Civil War South Carolina. Particular attention is paid to the legal limits placed on free blacks and on owners seeking to manumit slaves. The description reveals a pre- and post-war region with an extraordinarily virulent and entrenched form of racism. This racism set the stage for difficult decisions during reconstruction. Decisions weighing the costs and benefits to members of the black community of staying and fighting for their rights versus leaving for Liberia to seek a better life.

The focus of the tale diverts from the specifics of Hill’s story for a general discussion on black and white views of black citizenship and immigration in pre-Civil War United States. It discusses the irony of the Liberian constitution’s provisions preventing white citizenship. There is even discussion of the debate over how diplomatic recognition of Liberia and Haiti might lead to blacks having to be recognized as equals, as least for
Liberian and Haitian diplomats and their families.

The story then returns to upcountry South Carolina in the post-Civil War era. The rise of the Ku Klux Klan, the violence against blacks, the federal government's response, and Hill's own testimony against members of the Klan are described in detail. Hill's decision and the decision of his Clay Hill company to immigrate are examined and explained as are the difficulties faced by most free blacks seeking to immigrate. When they left, it seemed that the decision by and departure of Hill's group was more timely than they could have imagined. The federal prosecutions of Klan members had bogged down and cases were being overturned. The United States Supreme Court decided the *Slaughterhouse Cases* and effectively removed the federal government from the picture, heralding the end of reconstruction. The Klan and the violence returned stronger than ever. With the end of reconstruction, the interest in immigration grew exponentially. Sadly, immigration to Liberia had been greatly overrated. Malaria and homesickness took a toll on the immigrants. Perhaps twenty percent, including Reverend Hill, died of malaria, as many as a third of the immigrants died overall. Many returned to America. Some even returned to South Carolina. Those who stayed faced a country in a virtual civil war. Corruption, political infighting, and abuses of the native West African peoples had started the country on a tragic journey that has not ended.

This story concludes, however, not in Liberia, but with a different migration, the Great Migration of blacks from the South to the North. A migration that made a regional problem national. A migration that forced real changes. A migration that the author concludes was linked to the Liberian immigration in that the black Americans who left for Liberia were not exiting at all. When they left, they were seeking to bring the promise of the principles upon which America was founded more fully alive. Instead, they brought with them all the seeds for Liberia's failure.

The third story tells the tale of how the internationalists seeking a United States of the World instead gave rise to the growth and recognition of the civil liberties we take for granted. Civil liberties which had been neglected for 150 years. The main protagonist in this story is Catherine Crystal Eastman, a co-founder of the predecessor of the American Civil Liberties Union. A 1907 graduate of New York University School of Law, the restriction on women in law prevented her from practicing. She used her legal skills to become active in the early workers' compensation movement, in the women's suffrage movement, and in the internationalism movement. Much attention is spent on the theories behind the Ms. Eastman's version of internationalism which advocated against nation states and argued that boundaries between countries were artificial and harmful. Her version of internationalism is contrasted with the version espoused by Elihu Root.

The tale continues with discussion of the divisions within her part of the internationalism movement. It discusses the extent to which women were excluded from the "conventional" or official channels used for discussion of issues and how this exclusion made it necessity for women to take "radical" approaches to issues if they were to be heard. There is even discussion of where in the internationalist continuum President Wilson's views fit. Then came the first World War and the internationalists were left without a clear forum. Opposition to the nation state, to the government, was seen as unpatriotic and even treasonous. The internationalists were left trying to find a way to continue the discussion of their issues without going to jail. They found their mission changed into one of supporting the rights of free speech, press, and assembly. Through defending these "traditional" American liberties, they were able to continue some part of their agenda to continue the work against what they viewed as the "dangerous abstraction of state sovereignty."

The last tale presented begins with the unlikely friendship between Dean Roscoe Pound and flamboyant trial attorney Melvin Belli. The author sets forth the theory that the foundation for their friendship was the common desire to limit the growth of the administrative state and expand the field of common law tort law, but that ultimately the
administrative bureaucracy which each abhorred came to exist. Their efforts only helped shift the bureaucracy from the state to private parties. There are sections on the upbringing, careers, and philosophical development of each man. The author describes how they first began to work together under the auspices of the National Association of Claimants' Compensation Attorneys (NACCA). The NACCA was to become the American Trial Lawyers' Association (ATLA). He also describes what he thinks were the benefits each man received from their work together. This section concludes with an interesting discussion of the development of the American approach to tort law focusing on each man's contributions to the national debate on the best means for providing compensation for injuries.

The stories having all been told, I must add that occasionally a little less theory and a little more story would have made for a better read. The introductions to each story provide an excellent foundation for understanding the imagery of the stories. Unfortunately, the back and forth within the stories between story line and underlying theory distracts from the underlying strength of the book as a whole. That said, the choice of stories and writing are generally interesting. The author tells four good tales. Four tales from our history which can rightly shed light on the interplay between law, legal philosophies, and history.

--Lucinda Harrison-Cox
Public Services / Electronic Resources Librarian
Roger Williams University
School of Law Library


Over the past 30 years as Senate Historian, author Richard A. Baker (2006) pointed out, "I have prepared countless historical narratives to inform Senators, and others who are curious about the traditions, personalities, and landmarks of the World's Greatest Deliberative Body." (p.v.). Baker further reshapes these stories into concise vignettes from hundreds of Senate anecdotes, and selected 200 stories for this Senate history book. Baker's stories reflect on many Senate activities, from the famous and not so famous Senators, to the rare and unrevealed stories that educate, enlighten, and entertain the reader about personalitics and events that shaped the Senate of the 21st century. (Ibid.).

 Chapters in the book include: 1. Formative Years in the Senate, 1787-1800; 2. Golden Age of the Senate, 1801-1850; 3. War and Reconstruction, 1851-1880; 4. Origins of the Modern Senate, 1881-1920; 5. Era of Investigations, 1921-1940; 6. War and Reorganization, 1941-1963; 7. The Modern Senate, 1964-2002. Each story contains an illustration, photograph, or cartoon describing the vignette. Each story includes references for further historical reading. This reviewer recommends the noted illustrations, pictures, and cartoons; they are the essentials of each story. More in-depth readings are recommended for a better, and more complete, understanding of the historical story context.

Highlights from the Senate stories include: Senator Aaron Burr's infamous duel killing Treasury Secretary Alexander Hamilton. The Senate purchasing President Thomas Jefferson's personal library valued at $23,950.00, with 6,500 volumes. In 1861, the Senate expelled all 10 southern Senators representing the confederate states. Only two, Warren Harding and John F. Kennedy, won their presidential races as incumbent Senators. After an era of Senate investigations involving corruption, the Hollywood filming of "Mr. Smith Goes To Washington" - a film about Senate corruption - included the filming of 45 real-life Senators at Constitutional Hall in 1939. Less than 3 weeks after the attack on Pearl Harbor, Winston Churchill's war rally speech, addressed in the Senate Chamber, was concluded with thunderous applause! In 1957, Senator Kennedy's committee reported to the Senate its choices of the 5 greatest Senators: Henry Clay (KY), John C. Calhoun (SC), Daniel Webster (MA), Robert Taft (OH), and Robert La Folette (WI). This reviewer's
favorite cartoon of Senator McCarthy's hunt for Communists in the State Department, and the dismayed Secretary of State John Dulles finding McCarthy hiding in the desk drawer. The brilliant U.S. Senate picture photographed in the Senate Chamber on May 8, 2002 – showing all Senators – including a record-setting 14 women served as United States Senators.

Baker captures the soul of our nation's struggles as seen through the mirror reflecting the history of the United States Senate. The stories of struggle of our nation for freedom, liberty, and justice are for all Americans to read, especially political historians. The stories remind us that we are not just a product of our government, but of the people leading our government, of the people, by the people, ever casting a powerful shadow of human triumph and tragedy on our American Experience...

--Thomas J. Moran, M.L.S. Student
University of Pittsburgh
School of Information Sciences


Professor Paul Brand has written an extremely detailed study of the creation of the Provisions of Westminster (1259), the succeeding legislation of the Statute of Marlborough (1267) and its enforcement through to the end of the reign of King Edward I in 1307. With only Magna Carta (1215, 1216, 1223) and Provisions of Merton (1236) as preceding major legislation, the Provisions and its evolution into the Statute of Marlborough were important thirteenth-century legislation that remained part of the English common law throughout the Later Middle Ages.

Revising an earlier dissertation, Brand also revisits the earlier work of T. F. T. Plunkett whose Legislation of Edward I (1949 and revised edition of 1962) was based solely on printed sources available to him at the time of his writing. Brand has used later published works as well as extensive manuscript legal sources of the period to present a more comprehensive history of medieval English legislation, providing a review of the political and legal background to the baronial revolt for the decade between the mid-1250s to mid-1260s which led to the Provisions of Oxford and the later Statute of Marlborough. Following a literature review in his introduction, Part I deals with the enactment of the legislation from 1259 to 1267. The baronial revolt led to the Provisions of Oxford (1259) with later conflict ending after the death of Simon de Montfort in 1265. The king’s republication of the Provisions first in 1263 and 1264 and its evolution into the Statute of Marlborough (1267) attempted to correct and address problems affecting the legal system at that time.

Brand reviews the political, social and economic background to the statutes (chapters 1-3), followed by a chronological account of the years following the Provisions (chapter 4), its revision and republication in 1263 and 1264 (chapter 5), and their use in the succeeding four years (chapter 6) that leads up to a discussion of the enactment of the Statute of Marlborough of 1267 (chapter 7). The king’s defeat of Lord Montfort and his followers resulted in Marlborough’s preamble reflecting the king’s role in the making of legislation. Besides rewriting the preamble, there were eight new chapters reasserting royal jurisdictional power, confirmation of Magna Carta, procedure dealing with resEDUREisin, evasion of wardship, and allowing judgment by default in wardship cases in the case of continued non-appearance by the defendant.

Part II discusses the enforcement and interpretation of the Statute of Marlborough over the next forty years. The Statute of Marlborough Chapter 8 deals with the writ of contra formam feoffamenti, statutory action for tenants contesting liability to suit of court, followed by other mechanisms for enforcing chapter 9 of the statute (ch. 9).
Marlborough also affected the criminal justice system (ch. 10), and the procedural reforms made by the mesne process in the royal courts (ch. 11), the use of existing remedies (ch. 12), creation of new writs to enforce socage guardians (ch. 13), the use of distraint relating to other chapters besides chapter 9 of the statute (ch. 14), and abuses in the local courts (ch. 15).

A concluding chapter summarizes Brand’s findings. The appendixes contain the various texts of the Provisions and Statute of Marlborough, a bibliography, and index.

Other reviewers of this work praised Professor Brand’s detailed analysis of the documents and use of primary sources. Brand concludes with “The end result of the co-operative efforts of barons, justices and the king in the legislative process between 1259 and 1267 was to produce genuinely innovative legislation and to create an impressive model of large-scale legislative improvement in the common law.” (p.410). This specialized work is a must read for an expert analysis of statutory law of medieval England.

--Joel Fishman, Ph.D.
Duquesne University Center for Legal Information/Allegheny County Law Library

Like Dean Garvey, Story was a constitutional law scholar and an educator. He wrote the Commentaries when he was Dane Professor of Law at Harvard and serving as Associate Justice of the United States Supreme Court.

This recent purchase enhances the library’s strong rare book holdings of Story’s works. In 1999, Professor Daniel R. Coquillette donated a large collection of legal treatises written by Story. Story also wrote constitutional law books for children, including the Constitutional Class Book, bequeathed to the library by Kitty Freyer in 2005.

BUFFALO MIGRATION!

During the layout process for this issue of LH&RB, one of the illustrations sent by Kurt Metzmeier—an American Bison drawn by David Humphreys—managed to “migrate” onto the title page illustration of Hughes Reports that can be seen on page 2. The error was caught and corrected before the issue was uploaded to the Web.

The LH&RB SIS has never had a official mascot. This bison, by his actions, was clearly attempting to volunteer for that job. Therefore the Editor would like to nominate “Hughes the Bison” as the official mascot of our SIS. All those in favor...