

The Supreme Court Library --

A Source of Pride

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Reprinted from 47 *Arkansas Historical Quarterly* 136 (Summer 1988) with permission of the Arkansas Historical Association.

THE ARKANSAS SUPREME COURT LIBRARY, founded by act of the general assembly in 1851, is the oldest library in the state of Arkansas that is still operating. It serves judges, lawyers and laypersons who research in the very same books that were acquired over one hundred years ago.

That is not to say that the library has not developed and grown - it has. New books are added every day, as well as new formats for information, such as microforms and computers. But the nucleus of the collection that was acquired in the last century is still here. State reports, session laws, seventeenth and eighteenth century treatises authored by Sir Edward Coke and Sir William Blackstone and their contemporaries are useful today because they contain solutions to problems that are based on logic and equity.

It is difficult to imagine any controversy that might surround such a useful institution. However, some peculiar language in the legislation indicates that there was disagreement about something to do with the library. But the newspapers published in the 1850s hardly mention either its need or its founding. History books mention its founding but cast no light on the circumstances surrounding this event. The search for information about these circumstances was interesting. It required several forays into the files of the Arkansas History Commission, the Special Arkansas Collection at the Library of the University of Arkansas at Little Rock and the Old State House Library and Archives. The search uncovered the reason behind the peculiar law and also revealed some of the strengths and weaknesses of Arkansas's legal literature and written history. It led ultimately to a comparison of the Supreme Court Library collection with that of others, and one of the most interesting discoveries - that the first Arkansas Bar Association, formed in 1837, possessed a remarkable ingenuity in the administration of legal literature.

In the 1800s lawyers were a nomadic tribe. They rode together, ate, laughed, and slept together, following the gavel as it opened the terms of court in county after county. They could count on finding only a handful of law books to research their cases and these contained only general principles of law.¹ This challenged their forensic skills because there was little chance of finding a case in point. "The whole field of logic was open. They had to argue from general rules to particular applications."²

When the cases went on appeal to the supreme court in Little Rock, the lawyers had more to choose from. The libraries there were remarkably large for the times and remote locality.³ These libraries filled a need for scholarship and inspiration, but they also were a practical necessity

because practice in the capital city was much more formal and technical than out in the circuit. Our first chief justice, Daniel Ringo, led the way in this regard. He was a stickler for the technicalities of pleading. "With painful ingenuity . . . [he] sought out all the technical rulings that had ever been made."⁴

Law books were important during this period of our history, and of more general interest than today. The full text of the house and senate journals, including committee reports, and the full text of the acts were published in the *Arkansas Gazette* as the general assembly did its work. The digests of statutes were of such general interest that their sale was encouraged by advertisement. They even went on sale.

DIGESTS - AT \$2

A few copies of the Laws Of Arkansas compiled by John Steele and James M. Campbell, under the superintendence of Governor Pope, for sale at the Gazette office at the reduced price of \$2.⁵

Arkansas Justice, a form book for justices of the peace, was published in 1831. It received a *Gazette* notice worthy of a one-horse brougham.⁶

Law books were so important that continued education in their use was sought after. The texts of some early speeches to the bar display an impressive degree of scholarship. Albert Pike was considered the most intellectually endowed lawyer of that era. He spoke to a meeting of the bar in 1837. His explanation of *Stare Decisis* (the doctrine of legal precedent) and the use of primary and secondary sources was not a mere course in legal method or legal bibliography.⁷ In 1882 U. M. Rose, the ancestor of other prominent Arkansas lawyers, fairly dazzled the bar with his heavily footnoted address on "Titles of Statutes."⁸

Yes, law books were important, so important that a hospitable bar could not refuse access to their well stocked private libraries when the courts convened in Little Rock and lawyers from all parts of the state were in attendance. One can guess the problems this caused. After all, one would hesitate to lend books to one's opposing counsel so he could find the law to beat one with.⁹ Perhaps this is one of the reasons that the first association of Arkansas lawyers lobbied for a law library for the supreme court and members of the bar.

On November 24, 1837, in our first year of statehood, a group of lawyers gathered in Little Rock to form the "Bar Association of the State of Arkansas." They did the usual organizational things, such as draft a constitution, set meeting times, and determine an amount for dues. But the first substantial things they did were write a fee schedule, draft some rules of practice, and resolve to ask the legislature to fund a law library. They wanted it to be housed in the supreme court chambers and to be open for the use of the supreme court and all licensed attorneys. The association would take responsibility for its control and safe keeping.¹⁰

No such enabling act was passed and no evidence of the bar association bill was found in the house or senate journals. This is not surprising because the supreme court chamber was a humble abode for such an institution as a library. The court sat in a single "barren room in an unfinished

building, in a poor village buried in the heart of a forest."¹¹ But this act of the Arkansas bar demonstrated remarkable ingenuity and foresight. If the request had been granted it would have been one of the earliest law libraries located in court chambers and also available to the bar. Only one state court library, the Middlesex County Law Library in Massachusetts, was in existence when the Arkansas bar made the resolution. That library was founded in 1815. The Illinois Supreme Court Library was founded in 1837, the North Carolina Supreme Court Library in 1843, and the Court of Appeals Law Library in Albany, New York, in 1849. Others followed.¹² Today more than half of the states have law libraries after the pattern the association drafted, the only difference being that administration is usually under the courts rather than the bar.¹³

Although the idea of the law library took another fourteen years to mature, the bar was not left entirely wanting for a collection of primary law materials. On March 3, 1838, the State Library was created in the office of the Arkansas Secretary of State.¹⁴ No money was appropriated for the purchase of books, but at least there was a place and a person authorized to house and manage the state archives and to build a collection of reports, acts, and statutes by exchanging ours with other states.¹⁵

Federal documents were also given a home in the Secretary of State's office. The federal government fulfilled its information responsibility to the territories and the states by furnishing copies of the *Congressional Record*, *State Papers*, agency reports, statutes and other publications that allow us to be an informed and effective citizenry.

Organization of the State Library followed the pattern of most other states. It was an obvious way to provide for the information needs of a country that holds open government as an ideal.

Many of the supreme court libraries in other states grew out of the original state libraries. When the main collections grew to the point that space became a problem, the law portions were split off, and in most cases were put under the supervision of the court of last resort.¹⁶

Lack of space, however, does not appear to have been a moving force in Arkansas. When the Supreme Court Library was founded in 1851 some of the state library collection was transferred. Duplicate law titles were moved from the State Library the first year and the reports of other states soon followed.¹⁷ The Secretary of State did not complain about lack of space, however, until 1866, although this complaint appears in every Secretary of State's report after that until the collection was given to the Arkansas History Commission.¹⁸

The legislation that founded the Supreme Court Library was well thought out. It was more than just an additional appropriation to the court for the purchase of law books. It was to be a real library, one that would provide the tools that were needed to bring big city dispute resolution techniques to this small backwoods community.¹⁹

The Supreme Court Library Act of 1851 provided five sources of funding: an outright appropriation of \$200 a year, a part of the filing fee, an attorneys license fee, annual dues, and a supply of *Arkansas Reports* to be exchanged for the reports of other states. The act directed the construction of a room to house the library and gave direction as to its management.²⁰

This legislation has changed very little since 1851. We operate under the same law now as we did then.²¹ And a curious law it is. In addition to the provisions for location and means of funding, it also provides, in Section 10, the very last section of the act, as if added as an afterthought: "it shall not be lawful for the *judges of the said supreme court* or any other person to remove [any of the books] from said library and consultation" (Emphasis added.)

This restriction is unique in library legislation. Most law libraries in the nineteenth century did not allow their books to be checked out. (In most cases the same rule applies today.) Some law library acts restricted the use of the books to certain classes of patrons such as legislators, the governor, and to judges. Other law library acts allowed books to circulate, but required security to be posted for their safe return.²² No law has been found, however, that denied circulation to a specific class of patron, in this case, to the judges who would manage and administer the library. Why was this odd restriction included in the act? Were the supreme court justices, whose homes were in Batesville, Camden, and Fayetteville, "home-towned" in their own court.²³ Or was it a little joke on the court for harboring a member who was careless with another's books? One might imagine all sorts of scandalous things.

To find an answer, an attempt was made to find the legislative history of the act. Some information was found in the house and senate journals of the Arkansas General Assembly. These were published from 1835 until the mid-1950s, and are primarily minutes of the general assembly. They are much more detailed than the journals that are currently maintained, which contain little more than the ayes and nays. The early publications include notes and comments about the day to day activities of the general assembly and transcriptions of committee reports. Other documents, such as governors' addresses to the general assembly and some agency reports are also part of those records.

Because these journals are not indexed, a page by page search was necessary to uncover the legislative history therein. Senate Bill 93 was introduced some time prior to December 24, 1850, at a special session. It was then transferred to the Senate Judiciary Committee. The committee report was given by Senator Tom Byers from Chicot County. The report was favorable, except that "upon examination of said bill it is supposed by the committee to be very defective and not calculated to carry out the objects intended." A substitute bill was presented.²⁴ We will never know for sure what this defect was because Arkansas's archives are incomplete. The original Senate Bill 93, along with its substitute, may have been used to make paper cartridges during the Civil War,²⁵ or it may have been used as a napkin by one of Brooks' followers when they occupied the Old State House during the 1870s Brooks-Baxter war,²⁶ or it may have been sold for scrap paper when state offices (including the supreme court and its library) were moved to the new capitol building in 1911.²⁷

More recent bills have been preserved. Most of the house and senate bills dating from 1949 are available because of the efforts of the Arkansas Bureau of Legislative Research. These documents were recently micro-filmed and are available for public use at the Supreme Court Library and both law school libraries.

The substitute library bill apparently cured the defect that Senator Byers referred to because it met with no opposition, and further discussion could not be found. It passed the senate after the

third reading on December 28, 1850, only a few days after it was reported.²⁸ The House Committee on the Judiciary reported the bill favorably on January 6, 1851.²⁹ The rules were suspended, and it was passed on the same day.

I think it may safely be concluded that Section 10, that thinly veiled insult to the supreme court, was the cure of the supposed defect.

It required some creative research and a bit of luck to find the reason Section 10 was added. If the history of the supreme court was more finely documented in the history books, the reason that this restriction was added would have been apparent. Histories only allude, however, to the problems the court had with its docket during this period.³⁰

The connection was made while researching Senator Tom Byers, who submitted the committee report on the substituted bill. Byers was a lawyer so it seemed likely that there was some connection between him and one or more of the judges. No direct connection could be found. However, a plunge into the ancient documents preserved in our libraries uncovered a likely explanation of why this section was added. Early in the year 1850 the *Arkansas Gazette* published a series of three letters to the editor. They were found indexed under the name "Chicot," the county where Tom Byers lived, and could have been authored by him. The first letter did not survive because that edition of the newspaper was not preserved. The second, signed "Citizen," is an impassioned and erudite apology in answer to criticism of the supreme court and the state of its docket.³¹ The third, signed "Chicot," is a replication stating a powerful case for the criticism. There were eighty-seven cases on the docket that were held over from the previous term. Two were almost four years old, "to say nothing of the 100, or more, to the present term."³²

The disposition of other legislation sponsored by the court confirms the conclusion that it was in political trouble at the grass roots level over this problem. A letter from Luke E. Barber, the supreme court clerk, to Associate Justice Christopher C. Scott summarized the court's legislative package for the special term.³³ A request for a salary increase was denied. A request for a change in the date of the terms of court was denied. A request for alterations in the court chambers was defeated at the previous session. Barber reported that the Library Act had been introduced but he was not hopeful for its enactment. He explained that although the members of the general assembly might otherwise do what is right for the court, they had to face the music back home. But the Library Act was passed.

Within a few years the court solved the problem with the docket and has kept it firmly in control ever since, to such an extent that it is a source of pride. The library enabled the public to have access to a broader selection of legal materials and it also became a source of pride. Early historians described the Supreme Court Library in positive terms.³⁴ Examination of the collection in comparison with other libraries proves that the positive comments were earned.

There are a number of criteria that may be used to evaluate the quality of a modern library, such as the number of volumes, subject areas covered, number of volumes in given subject areas, currency of titles, quality, depth and breadth of coverage. Variables can also be used to qualify and quantify quality as to library staff and services provided. In the nineteenth century, before

the information and population explosions, book count and a quick look at the treatises would reveal quality.

The earliest book count that is available was obtained from a book catalog published by this library in 1895.³⁵ We counted approximately 11,000 volumes in several categories: 6,712 state reports and statutes, 821 United States statutes and cases, 1,435 British titles, 1,485 treatise volumes and 794 miscellaneous reports and periodicals.

A noted authority wrote in 1876 that a complete law library would require more than 7,000 volumes.³⁶ The growth of legal literature during the twenty-year period between this statement and the publication of our book catalog is illustrated by the book counts of other libraries. The New York State Library in its law library had 12,600 volumes in 1894. The Association of the Bar of the City of New York, a very prestigious institution then and now, counted 40,000 in 1892.³⁷ In that same year the North Carolina Supreme Court Library had 10,000 volumes.³⁸ In 1897 the Library of Congress had 97,813 volumes in its entire collection, 10,000 of which were the law collection located in the United States Supreme Court conference room.³⁹

The list of primary materials (reports and statutes) found in *A Catalogue of law books contained in the Supreme Court Library of the State of Arkansas, October, 1895* appears to be fairly complete. There was also a broad selection of secondary materials such as treatises, encyclopedias, digests, and periodicals. The treatises are arranged under 193 subject headings, 33 entries are under the heading "Evidence" and 63 are under "Practice and Pleading." Railroad law was of particular interest during that time. Thirty-six titles are allocated there, including the twenty-five volume set of *American Railway Reports* and a fifty-three volume set of *American and English Railway Cases*. Forty criminal law titles are listed and twenty-seven on domestic relations.

Today most of these old titles are separated from the collection and must be fetched by one of the librarians. There is some, but not frequent, use of such titles as *Hurd on Slavery*, *Carr's Trial of Lunatics*, *Archibold's Nisi Prius* or *Selwin's Nisi Prius*. But these were important approaches to problem solving in the nineteenth century and demonstrate that the collection was sufficiently broad to serve nearly all of the needs of the community for law information.

The Supreme Court Library today is located in the Justice Building on the State Capitol grounds. It continues to collect materials on a broad range of law subjects, even those not addressed by the state court system, such as bankruptcy and civil rights, because we serve the law information needs of a broad base of patrons. However, it is no longer necessary for this library to bear the entire burden of providing legal information because there are two law schools in Arkansas that each has a very fine law library. Therefore, the Supreme Court Library limits in-depth collection to subjects that are of particular interest to the court, such as evidence, procedure, criminal law, constitutional law, and property.

Development of a law library is an art because needs must be predicted. The responsibility is great because "justice speaks in measured words -- in careful thoughts set down by men too much aware that they are only men, though charged to do the work of gods."⁴⁰ So we collect these careful thoughts that they may be used by those charged with solving new problems.

These new materials are added to those purchased over a century ago to make a whole that is greater than each of its parts. And the whole is greater than it might have been if the pique of an early lawmaker had not mandated that the library materials remain in the library and not circulate to "the judges of the said supreme court or *any other person.* ." (Emphasis added.)

The library was maintained by the clerk of the court from the time it was founded until a librarian was appointed. The librarian's position was authorized by Act 92 of 1905 but the first evidence that a librarian was appointed is in 1916. The position had an authorized salary of \$75 per month, to be paid by an auditor's warrant. This was significant because in those days many public officials were compensated by the fees that were paid by the public for their services.

In 1915 the assistant librarian's position was authorized. The librarian's wage was raised to \$2,000 a year and the assistant was paid \$75 a month. Act 495 of 1921 raised the librarian to \$2,400 and the assistant to \$1,800. The court clerks who served as librarians were:

- Luke E. Barber --- 1841-1868
- Norval W. Cox --- 1868-1874
- Luke E. Barber --- 1874-1886
- William P. Campbell --- 1886-1896
- Peyton D. English --- 1896-1915

Librarians appointed under the 1905 Act were:

- John T. Castle --- 1916-1936
- William J. Kirby --- 1936-1941
- John H. Caldwell --- 1941-1959
- Jerry Thomasson --- 1959-1960
- Ruth Lindsey --- 1960-1979
- Jacqueline S. Wright --- 1979-

* The author was appointed librarian of the Supreme Court Library in 1979. She has a law degree from the University of Oklahoma and a degree in library science from the University of Arkansas at Little Rock. She wishes to thank Margaret Beam, assistant librarian of the Arkansas Supreme Court Library and Carol Griffiee, free lance writer, who reviewed the draft of this article and made thoughtful editorial suggestions.

1 George B. Rose, "Bench and Bar of Arkansas," in Fay Hempstead, *Historical Review of Arkansas* (3 vols., Chicago, 1911), I, 445-446.

2 *Ibid.*, 446.

3 *Ibid.*; George B. Rose, "The Bar of Early Arkansas," *Proceedings of the Fifth Annual Meeting of the Bar Association of Arkansas* (Little Rock, 1903), 27, 33.

4 George B. Rose, "Bench and Bar of Arkansas," I, 446; George B. Rose, "The Bar of Early Arkansas," 31-32; U. M. Rose, "Practice at the Bar in Early Days in Arkansas," *Proceedings of the Fourteenth Annual Session of the Bar Association of Arkansas* (Little Rock, 1911), 65.

5 Little Rock *Arkansas State Gazette*, February 7, 1837.

6 *Ibid.*, January 30, 1831.

7 Albert Pike, "Address Delivered Before the Arkansas Bar Association in the Supreme Court Room, at the City of Little Rock on the 13th of July, 1836," reprinted in *Proceedings of the Twenty-Eighth Annual Session of the Bar Association of Arkansas* (Little Rock, 1925), 127.

8 U.M. Rose, "Titles of Statutes," *Report of the Fifth Annual Meeting of the American Bar Association, 1882* (Philadelphia, 1883), 221.

9 John F. Dillon, "Illustrative Examples and Testimonies as to the Value of Books and Free Libraries," *American Law Review*, XXXVIII (July-August 1904), 553.

10 "Constitution of the Bar Association of the State of Arkansas, adopted in 1837," reprinted in *Report of the Proceedings of the Bar Association of Arkansas at the Seventh Annual Meeting* (Little Rock, 1904), 49; George B. Rose, "Previous Bar Associations in Arkansas," *Proceedings of the Thirty-Fifth Annual Session of the Arkansas State Bar Association* (Little Rock, 1932), 122.

11 "George B. Rose, "Bench and Bar of Arkansas," I, 435. There was not even a place for the clerk to keep the court records and papers. George B. Pugh, "Our Supreme Court," *Proceedings of the Twenty-Ninth Annual Session of the Bar Association of Arkansas* (Little Rock, 1926), 16.

12 Stephen B. Griswold, "Law Libraries," in U. S. Department of the Interior, Bureau of Education, *Public Libraries in the U.S.A., Their History, Condition and Management: Special Report* (Washington, D. C., 1876), 161, 166; Smithsonian Institution, *Appendix to the Report of the Board of Regents* (Washington, D. C., 1850). Thirty law libraries were included in this report, twenty-five state law libraries, four bar association collections and Harvard College. Raymond M. Taylor, "History of the North Carolina Supreme Court Library," *North Carolina Reports*. CCLXXV (1969), 713.

13 Sylvia A. Gonzalez, "Survey of Court Libraries," Association of Law Libraries, *Law Library Journal*, LXXIV (1981), 458; Gonzalez, "Statistical Survey of Government Law Libraries," *ibid.*, LXVI (1973), 290.

14 E. H. English, *Digest of the Statutes of Arkansas* (Little Rock, 1848), ch. 154, pp. 953-955. Don't bother to look for this in the *Acts of Arkansas* for that session because it is not there. This is just another peculiarity of Arkansas legal materials.

15 James Sevier Conway, "Message from the Governor," *Journals of the Special Session of the General Assembly of the State of Arkansas* (November 1837-March 1838), 176, 182.

16 Christine A. Brock, "Law Libraries and Librarians: A Revisionist History or More Than You Ever Wanted to Know," *Law Library Journal*, LXVII (1974), 325.

17 *Arkansas Acts*, January 11, 1853, Sec. 3, p. 158.

18 *Biennial Report of the Secretary of State of the State of Arkansas*, 1886, p. 10; 1888, p. 10; 1890, p. 18; 1892, p. 14; 1896, p.4; 1898, p. 6; 1900, p.4; 1902, p.5; 1904, p. 13; 1906, p. 13; 1912, p. 6; 1920, p. ix; 1924, p. 4; 1926, p. xxxv.

19 The population of Little Rock in 1850 was 2,167. The entire state had a population of only 209,987, and a small number were literate. *Arkansas Statistical Abstract, 1986* (Little Rock: University of Arkansas at Little Rock State Data Center), 4.

20 *Ark. Acts*, 1850-1851, approved January 9, 1851, p. 89-91.

21 *Ark. Code Ann.* Sect. 16-11-110 (1987).

22 Bethany J. Ochal, "American Bicentennial History of Law Libraries: A Panel," *Law Library Journal*, LXIX (1976), 535; Henry A. Holmes, "State and Territorial Libraries," in *Public Libraries of the U. S. A., Their History, Condition and Management: Special Report*, 297.

23 "Home Towned" is a euphemism that lawyers sometimes use to describe mistreatment when they try cases outside their home county and have failed to associate with a local attorney. The nature of the practice in the 1850s was such that it is not likely this excuse was available.

24 *Arkansas Senate Journal* (1850-1851), 282.

25 David Y. Thomas, *Arkansas in War and Reconstruction* (Little Rock, 1926), 102-103.

26 *Arkansas Gazette*, May 27, 1874, p. 4, col. 3.

27 Interview with Dr. John L. Ferguson, Little Rock, October 1986.

28 *Senate Journal* (1850-1851), 315.

29 *Arkansas House Journal* (1850-1851), 390.

30 George B. Rose, "The Supreme Court of Arkansas," *The Green Bag*, IV (September 1892), 417, 427. *The Green Bag* was a monthly magazine for lawyers that published articles of interest such as biographical sketches of prominent attorneys, anecdotes, and articles about law schools and the courts. The title is taken from the green bags that seventeenth century attorneys carried. The magazine was published in Boston.

31 *Arkansas Gazette*, February 8, 1850, p. 2, col. 5.

32 *Ibid.*, February 22, 1850, p. 2, col. 5.

33 Letter from Luke E. Barber to Associate Justice Christopher C. Scott, December 1850, Small Manuscript Collection (Arkansas History Commission, Little Rock).

34 Josiah H. Shinn, "State Offices," Part I, in "Libraries and Societies," by John Hugh Reynolds, Arkansas Historical Association, *Publications* (4 vols., Fayetteville, Ark., 1906), I, 103-104; Goodspeed Publishing Co., *Biographical & Historical Memoirs of Arkansas: General History of Arkansas* (1889; reprint ed., Easley, S.C., 1978, 1984), 61-62.

35 W. P. Campbell, *A Catalogue of Law Books Contained in the Supreme Court Library of the State of Arkansas* (Little Rock, 1895).

36 Griswold, "Law Libraries," 162.

37 Betty W. Taylor, "Bibliographic Control and Guides to Historical Sources," *Library Journal*, LXIX (1976), 347, 356.

38 Raymond M. Taylor, "History of the North Carolina Supreme Court Library," 714.

39 "A Great Law Library: The Interesting and Valuable Collection of Congress," *Albany Law Journal*, LVIII (August 1898), 95.

40 Dave Webster, "The Law Library," *Law Library Journal* LXIII (1970), 13.