

INTRODUCTION

THE MAKING OF THIS COLLECTION was inspired by two phenomena. The first was the publication in 1990 of Erwin Surrency's book, *A History of American Law Publishing*. This book was enthusiastically received as the first comprehensive book on law publishing in America. I join in the praise of Professor Surrency, and I have valued his friendship for many years. However, his book is the beginning, not the end, of the study of the subject; it is the pathbreaker and the guide to further research. This collection of essays and bibliographies attempts to provide another piece of the larger picture. Whereas Professor Surrency's book is broad, this one is deep, so far as our limited resources of time and energy have permitted. We have benefitted greatly from Professor Surrency's work, and we have attempted to add the details as to the Commonwealth of Virginia.

Very little Virginia legal bibliography has preceded this book. Therefore, these essays and lists are, more or less, the beginning, and they are designed as beacons to point the way to further research in this fascinating field. This book might well have been called a trial bibliography had that title not been preempted.

The importance of legal bibliography is that it makes available easy access to the foundation stones and the building blocks of legal scholarship. The understanding of law, as much as any intellectual endeavor, depends upon the ideas and experiences of the past. This is equally true for judges, legislators, lawyers, and law teachers. The entire legal profession is dependent upon its books, for the law is an intellectual and a bookish profession. The future of serious legal scholarship must depend on its memory, and it is better to trust to the written rather than the oral memory.

Legal bibliography can be seen as a part of legal history. For that matter, all law can be seen as a part of legal history because the line between current law and legal history is an elusive one. Perhaps legal history is antiquated rules that once were but are no longer in force. But the antiquated rules must be remembered for two reasons. First, they influenced the formation of the current rules of law; they are the background of the current law. Second, the old rules of law were superseded or rejected for some good reason. If these developments are forgotten, we may unwittingly repeat mistakes. Change is not necessarily good, and much folly is sold to the gullible and ignorant as "reform."

The second motivation behind this book is an appalling practice among librarians that is referred to euphemistically as weeding. Weeding is the removing of books from library collections and discarding them. When a librarian to whom the care and custody of a book has been entrusted decides that it is more efficient to throw a book away rather than to preserve it for some future reader, that book, that receptacle of thought and human experience, is unceremoniously deaccessioned and murdered. Why? Perhaps it is because a new book needs the shelf space and the board of trustees will not build an extension onto the library building; because the librarian believes that the book has been superseded; because the temporary custodian of the book thinks that no one has used the book recently and no one is likely to use it during his or her tenure as librarian; or because the book expresses ideas that are presently unorthodox and politically incorrect. Libraries full of old books are the repositories of wisdom and of folly, and it is not always clear which is which. Therefore, we must preserve them all so that future generations can come to their own conclusions.

The relationship of the newly invented electronic storage of the written word and the old established method of recordation in book form, now referred to by the sociologists as print culture, is presently being evolved by the time-honored method of trial and error. The electronic technicians are predicting a book-free world where all knowledge will be preserved only in some electronic form. These people, however, are inexperienced in the work of in-depth research, and they do not understand the limitations of electronic storage and retrieval, nor the utility of the book in its codex form.

This is not to denigrate the usefulness of the electronic storage of information. Electronic data banks have some advantages over books. Furthermore, electronic typesetting has recently revolutionized book production in the same degree of magnitude as did the invention of moveable type in the fifteenth century.

However, the point being belabored here is that books and electronic data banks both have their legitimate places in the service of scholarship. Both have their relative advantages. And both must be used, and thus books must be kept, preserved, and made available.

It is hoped that this book will demonstrate the continuing value of Virginia law books and convince librarians to retain the works discussed and listed herein. If this purpose fails, then we hope that bibliophiles and other collectors will pick up those that may have been discarded and preserve them for posterity.

In 1863, West Virginia was made into a new and separate state, and thus, after that date, it made good sense to make combined legal indexes, digests, and encyclopedias for both Virginia and West Virginia

because the common and statute law of Virginia before 1863 is the common law of West Virginia. (West Virginia Code § 2-1-1.) It was also economically wise because the bar of West Virginia was too small to support the publication of many law books without a broader market for them. And thus many of the law books in this bibliography reflect these intellectual and financial economies.

However, at the present, this combination has outlived its usefulness. Today the laws of Virginia and West Virginia are no longer uniquely similar. This is especially true in the area of civil procedure, because the West Virginia state courts use a slightly modified version of the *Federal Rules of Civil Procedure*. In the last 130 years, a large independent body of case and statutory law has grown up, which is not very relevant or useful to the legal practitioners of the other state. Today, it is very annoying and frustrating to have this combined treatment of the separate laws of Virginia and West Virginia. The future of successful law publishing is the separation and specialization of law books by individual jurisdiction.

Constitutions and constitutional conventions are not included in this book because they have been treated in Earl G. Swem, "A Bibliography of the Conventions and Constitutions of Virginia," *Bulletin of the Virginia State Library*, vol. 3, no. 4, pp. 359-441 (Oct. 1910). Note also A. E. Dick Howard's *Commentaries on the Constitution of Virginia* (1974), which gives the historical background of the present Constitution of Virginia, and Professor Howard's article " 'For the Common Benefit': Constitutional History in Virginia as a Casebook for the Modern Constitution-Maker," *Virginia Law Review*, vol. 54, pp. 816-902 (1968), which discusses the Virginia constitutions of 1776, 1830, and 1851. Furthermore, the creation of a constitution is a political phenomenon even though the result is the establishment of the fundamental law.

Treatises, monographs, continuing legal education materials, and such like publications that appeared after 1950 have not been included here because the large quantity of these books requires a separate volume to list them all. This bibliography will have to await another day for compilation and separate publication.