

The Evolution of Public Law Libraries

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ublic demand for access to legal information has grown tremendously in the 20th and 21st centuries. Public law libraries are instrumental in providing the resources and training to meet such demand. For the past 200 years public law libraries have evolved from membership-driven organizations to publicly funded institutions. Along the way, they have played an important role in society and law librarianship by shaping attitudes about serving the public.

AALL's State, Court, and County Law Libraries Special Interest Section (SCCLL-SIS) consists of different types of law libraries that are used by a diverse patron population. Library users range from judges and members of the practicing bar to the general public. Law libraries that admit the public are unable to predict who their next user will be or what the next question might be.

The law libraries that belong to the SCCLL-SIS are state, court, and county law libraries. State law libraries are often part of the state library system, part of the state's highest appellate court, or part of a department within state government. Court libraries are part of the court system, either on the federal or state level, and among these types of law libraries are agency libraries, such as those that serve law departments, attorneys general offices, and departments within the federal government. County law libraries are usually designated by statute.

Membership Libraries Lead the Way

Even though the term "membership/subscription" law library is not reflected in the title of the SCCLL-SIS, these are the libraries that formed the nucleus of law libraries that today offer services to the public. They are also among the most storied law libraries in America.

The Law Library Company of the City of Philadelphia, now known as the Jenkins Law Library, is the nation's oldest law library. Founded in 1802 by 71 members of the bar, its purpose was to establish a collection of law materials for them to use in their law practices. Members purchased stock in the company for \$20/share, and annual dues were \$2. It published its first catalog in 1805, which listed 305 volumes. By the end of the 19th century, Jenkins was among the top three law libraries in the country in terms of the size of its collection. Today, the Jenkins Law Library continues as

A growing need for public access to legal information, funding cuts shape the future of public libraries

a membership law library, and it is now designated by state statute as the law library for the city and county of Philadelphia and is open to the general public. In essence it has become a hybrid law library in the sense that it is a membership law library that is also open to the public.

The Social Law Library in Boston was established in 1803. It, too, is a membership law library, and members purchased stock in the company and continue to pay annual dues. Both libraries are 501(c)(3) nonprofit corporations and are free-standing entities governed by a board of trustees. Unlike Jenkins, however, the Social Law Library does not admit the public. Both institutions provide complimentary memberships to legal service agencies that serve the public, as well as to the courts and other government agencies.

Bar association law libraries have traditionally been for the use of the members of that association and are funded by a portion of bar dues. As a rule, these libraries are for members only and are not open to the public.

Membership law libraries grew as the United States expanded westward, and by the 1850s most major cities east of the Mississippi River had a law association or membership law library. Membership dues alone, however, were not enough to support these law libraries. The expense of maintaining books when legal information began to grow rapidly led to the dissolution of many membership law libraries, and their collections were merged with county law libraries or law schools. Membership law libraries still in existence today are located in Maryland, Massachusetts, Missouri, New York, Ohio, Pennsylvania, and Virginia.

One example of a dissolved membership law library is the Rhode Island State Law Library, which was originally organized as a subscription law library in 1827. By 1868 the association law library disbanded and turned over its collection to the state. The same is true for the largest and most esteemed county law library in the country—the Los Angeles County Law Library. Its basic collection came from the Los Angeles Bar Association's law library in 1891.

Funding Public Law Libraries

As membership and association law libraries experienced funding difficulties, resourceful supporters of such libraries mined a second revenue source: court filing fees. The

practice of using filing fees as a revenue stream for county law libraries dates back to the mid-19th century. The fees are usually a tax or add-on to the basic filing fee so that they do not reduce the court's income.

The practice gained momentum when the California legislature enacted legislation to establish county law libraries in 1891 for the use of attorneys and the general public and funded them with court filing fees. Other states followed California's lead, but there is no uniform law or approach for the establishment, operation, or funding of county law libraries.

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As the country grew, the variety of legislative tactics developed in the new states to fund county law libraries ranged from providing set appropriations to using a portion of monies collected from “fines, penalties, forfeited deposits, and forfeited bail bonds” under the liquor control act or state traffic laws, as well as the previously mentioned court filing fees, according to *American Library Laws*, edited by James C. Foutts. In fact, the portion of the money from the liquor control act or state traffic laws is how Ohio association and county law libraries are still funded today.

Some states created county law libraries but failed to provide any funding mechanism. In Pennsylvania, for example, legislation exists that establishes county law libraries, but there is no enabling legislation for their funding. Each county is on its own to seek funding from the legislature, with the result that the process varies from county to county.

The Jenkins Law Library began accepting filing fees as a means of support in 1860 (\$.25/filing), and today filing fees (20 percent of certain filings) constitute 74 percent of the

law library's income. The Social Law Library does not receive court filing fees, but it is able to reside rent free in beautiful quarters in the newly renovated John Adams Courthouse, and it receives a state appropriation that it has to justify each year.

The lack of uniformity is a recurring theme in the history of funding public law libraries. As a result of the lack of uniform approaches, there are no uniform solutions to funding shortages, and many public law libraries continue to experience challenges related to funding issues.

Attitudes toward Public Access to Legal Information

Against the backdrop of these funding difficulties, a debate was raging within the law librarian community on the question of public access to law libraries. Many librarians strongly favored public access, while others opposed it. Some, though in favor, focused more on potential problems, such as the unauthorized practice of law, rather than on possible solutions.

As the 20th century began, forward-thinking law librarians already understood the value of publicly available legal information. “It is with the public at large that the interesting and puzzling part of the county law librarian's work reaches its climax,” writes Massachusetts librarian Sumner York Wheeler in the 1917 volume of *Law Library Journal*, “for while the layman does not resort frequently to our library, yet his presence is always more or less felt, and the librarian is constantly aware that it is public money which is supporting his library and that he should serve the layman with the same fidelity that he extends to a member of the bar.”

However, Wheeler's public service ethic was still questioned as late as 1971. “Our law states [the library] shall be maintained as a free public library for the benefit of the people of the county, the officers and the judges, and all the other people that want to use it,” writes Elizabeth Holt Poe in the February 1973 issue of *LLJ*. “It does not say we have to treat them all alike.”

Others agreed. “I would not close off our library to lay persons and say, ‘no lay person can come in,’ except that I do not believe I have the same obligation to them that I do to the members of the bar,” according to another law librarian in the November 1971 issue of *LLJ*.

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The AALL Code of Ethics, adopted in 1979, states that “law librarians have a duty actively to promote free and effective access to legal information,” as printed in the fall 1979 issue of *LLJ*. That year many states did not have a system of public law libraries. At AALL’s 72nd Annual Meeting in 1979, a panel discussion on public access to legal information was held in order to further define the law librarian’s role in assisting the lay public.

Some in attendance argued that public libraries should be the preferred source of legal information to the layperson, with law libraries providing support to the public libraries. Others argued that law librarians should take the lead in providing legal information to the public. Peter Schankck, library director at the University of Detroit, urged law librarians to “promote or stimulate or lobby on behalf of having public law libraries in states where they are not now existing,” according to the fall 1979 issue of *LLJ*.

In 1984, on a related issue, Robert J. Nissenbaum suggested the need for a national legal information center in order to promote legal literacy. “[Our] legal system has failed to provide adequate institutions to promote legal socialization of the individual,” he asserts in the 1984-1985 issue 4 of *LLJ*. He defined legal socialization as the ability to understand the legal consequences of one’s actions and predicted that legal socialization would enable the individual to make informed decisions, promoting dispute resolution and avoiding many legal disputes. State, court, and county law libraries, if properly supported, could operate as a nationwide network of local legal information centers.

In the 21st century, public access to legal information has, if anything, grown in importance. On the one hand, the law increases in volume and complexity with each passing year, while, on the other hand, the number of self-represented litigants is rising exponentially.

State, court, and county law libraries have carried much of the burden of assisting self-represented litigants because attorney pro bono work and legal assistance programs give only bare-bones service to a minority of those needing help. Attorneys from small firms also need access to legal materials because many of them cannot afford subscriptions to pricey legal databases.

More than ever before, people demand public access to legal information. The belief in free access to legal information is now global, and the debate about the public’s access to law libraries is largely over. Legal information institutes of the world made a joint declaration in October 2002

supporting the right of people from all nations to have free access to legal information during the Law via Internet Conference held in Montreal (www.worldlii.org/worldlii/declaration). The major hurdle for public access to legal information is, of course, cost, which returns us to the question of funding.

Threats to Public Access Due to Funding Crises

In 1969 Jacquelyn Jurkins noted that 39 states had statutory provisions for county law libraries. She observed in the May 1969 issue of *LLJ* that the evolution of county law libraries was erratic and lacked standards “not only on a state-to-state basis, but on a county-to-county basis within a particular state.” By 2005, 49 states had enacted statutory provisions for county law libraries, according to Paula Seeger’s, “State Laws about County Law Libraries” (www.aallnet.org/sis/sccll/LAWS%20ABOUT%20COUNTY%20LAW%20LIBRARIES.pdf).

But even where funding mechanisms were similar, funding inequalities developed. For example, where funding is by a portion of filing fees, public law libraries in counties with a high litigation volume prosper more than law libraries in counties that do not. As a result, public law libraries have often had to fight legal battles to secure adequate support, writes William J. Powers, Jr., in the May 1971 issue of *LLJ*.

While there have been many success stories for continuing public access to legal information, there have also been several agonizing defeats. The Georgia Legislature established a state law library in 1831. In 1992 the library was moved from the judicial building to a much smaller location across from City Hall. The staff was reduced through the years from nine to three. In the past several years the library’s budget was cut so severely that its collection was little better than what is available on the Internet. Foot traffic had diminished, partly due to the budget cuts, but also because more patrons ask legal reference questions by telephone, fax, and e-mail.

“We felt like this was an area where we could find some savings, since it was a public library but was underutilized,” says the governor’s press secretary, Shane Nix, in the March 3, 2005, issue of *The Atlanta Journal-Constitution*. A spokesman for the Attorney General’s Office admitted that shutting down the library would not save the state any money, but would instead divert the money to the state law department’s operating fund. He stated that the state’s academic and county law libraries

could serve the public just as well. The *Fulton Co. Daily Report* on March 29, 2005, reported that the Attorney General’s Office would not allow the librarians to comment on the bill. Georgia *Senate Bill 216* deleted all references to the library in the Georgia Code. The library is now available only to the Attorney General’s Office.

Florida’s county law library system suffered a similar blow in 2003 with *HB-0113A*. The Florida Legislature eliminated the law granting filing fee revenues to county law libraries, thereby eradicating the county law libraries’ sole source of revenue. The state declined to finance the county law libraries because the legislators did not consider law libraries an “essential service” of the courts. The bill’s supporters argued that its cost-saving measures would free up enough county funds to enable each county to fund its own law library. Opponents point out that local funding will mean that some county law libraries survive while others do not.

The story of these public law libraries is disheartening. Most public law libraries do not face such drastic situations. Many have stable budgets, a situation, however, that is in effect an annual budget cut, given that legal material costs increase roughly 15 percent each year.

Conclusion

The likely trend for the 21st century is more unified support among librarians for public access. Unfortunately, free access to legal information will continue to be undermined by funding issues that have always dogged public law libraries.

As we begin AALL’s centennial year, members must work together to educate lawmakers and the public about the significance of legal information in a free society. Public access to legal information is not just an issue for the SCCLL, Legal Information Services to the Public (LISP), and Social Responsibilities (SR) Special Interest Sections. Limited public access to legal information affects us all. Law librarians of all types need to come together in strong support of public access to legal information.

James Madison said, “The advancement and diffusion of knowledge is the only guardian of true liberty.” We suffer not only as librarians, but also as citizens in the absence of abundant legal information. ■

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