

Winter 1949

Legal Bibliography and the Use of Law Books, by Arthur S. Beardsley and Oscar C. Orman

Elizabeth Finley

Covington, Burling, Rublee & Shorb

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Legal Writing and Research Commons](#)

Recommended Citation

Finley, Elizabeth (1949) "Legal Bibliography and the Use of Law Books, by Arthur S. Beardsley and Oscar C. Orman," *Indiana Law Journal*: Vol. 24: Iss. 2, Article 16.

Available at: <http://www.repository.law.indiana.edu/ilj/vol24/iss2/16>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

LEGAL BIBLIOGRAPHY AND THE USE OF LAW BOOKS. By Arthur S. Beardsley* and Oscar C. Orman.** Brooklyn: The Foundation Press, Inc., 2nd ed. 1947. Pp. xii, 653. \$6.00.

It is refreshing to find, in a book on legal bibliography designed to assist law students and legal researchers, at least a passing reference, where statutory construction is discussed, to the subject of legislative intent. The authors devote one chapter to Legislation, wherein they say, "It is sometimes desirable to trace a bill from its introduction to final passage by the Congress."¹ This faint recognition of the importance of legislative history is an all too tentative and timid step to be sure, but still a step in the right direction.

Any law library these days that feels it is complete when it has provided the standard reports, digests, statutes and treatises is indeed living in the good old days. And any law school which neglects to prepare its students in the use of "nonlegal legal material" as well as in the use of the conventional research sources is turning out ill-equipped graduates. Particularly are the graduates handicapped if they find themselves involved in a question of federal law. More and more the federal courts are relying on the legislative history of a statute when interpreting it, and more and more

42. P. 556.

† All Souls College, Oxford University, Oxford, England. Formerly Professor of Law, University of Berlin.

* Member, Washington Bar.

** Lecturer in Legal Bibliography, Washington University, St. Louis, Missouri.

1. P. 63.

lawyers are investigating the history before advising a client on the procedure necessary to comply with a statute.²

Although there are numerous references to legislative history in court opinions in recent years, such references are far more numerous in the briefs filed with the courts. There is no accurate measure for judging how great an influence such citations by counsel have on court decisions, but it is certain that they are not ignored. The recent case of *Hynes v. Grimes Packing Co.*³ illustrates the importance of delving into legislative history. This case involved the validity of an administrative regulation purporting to give a tribe of Alaskan Indians exclusive fishing rights in certain waters. The answer depended on the proper reconciliation of several statutes dealing with lands, fishing and Indians. The briefs filed by both sides placed heavy emphasis on congressional hearings and reports on the several statutes, and on several bills which were not finally enacted. It is apparent from the opinion of the Circuit Court of Appeals that careful consideration had been given to the citations offered by counsel.

In speaking of the process of construction, Mr. Justice Frankfurter has said: "We must, no doubt, accord the words the sense in which Congress used them. . . . Statutes are not archaeological documents to be studied in a library. They are written to guide the actions of men."⁴ Justice Frankfurter criticizes the rigid English method of interpretation which does not go beyond the statute itself and remarks: "If the purpose of construction is the ascertainment of meaning, nothing that is logically relevant should be excluded."⁵

2. In *Spiegel's Estate v. Commissioner*, 69 Sup. Ct. 301 (1949), Mr. Justice Frankfurter demonstrates the importance of legislative materials in a quantitative fashion. He finds 134 cases which fall under the heading "Decisions During the Past Decade in Which Legislative History was Decisive of Construction of a Particular Statutory Provision." *Id.* at 355.
3. 165 F.2d 323 (C. C. A. 9th 1947), *cert. granted*, 333 U. S. 866 (1948).
4. *Some Reflections on the Reading of Statutes*, 47 COL. L. REV. 527, 536 (1947).
5. *Id.* at 541. Mr. Justice Frankfurter's conception of the interpretative process is detailed in Wolfson, Book Review, 23 IND. L. J. 381 (1948). Mr. Justice Jackson seems to believe that the British courts, which, "with their long accumulation of experience, consider Parliamentary proceedings too treacherous a ground for interpretation of statutes," follow a practice that is not without merit: ". . . after all, should a statute mean to a court what was in the minds but not put into the words of men behind it, or

He traces the progress of the Supreme Court from the early days when the tendency was to follow the English rule of interpretation, to the present emphasis on legislative background.

Legislative reports were increasingly drawn upon, statements by those in charge of legislation, reports of investigating committees, recommendations of agencies entrusted with the enforcement of laws, etc. When Mr. Justice Holmes came to the Court, the U. S. Reports were practically barren of references to legislative materials. These swarm in current volumes. And let me say in passing that *the importance that such materials play in Supreme Court litigation carry far-reaching implications for bench and bar.*⁶

Quite aside from their value in the practice of law, legislative materials are a guide to the trend of legislation, and to the acute observer are a portent of things to come. Reports of investigating committees of Congress are frequently the basis of reform legislation. The bar, more than any other group of citizens, should accept the responsibility of advising the Congress or the legislature, and of informing the public on developments in the law.

Although legislative background material is more easily available for federal statutes, its importance in state legislation is also becoming recognized. Usually there are no written committee reports, published hearings or debates on state legislation. However, there are frequently recommendations by local bar associations and civic organizations, and, occasionally, by special investigating committees. Since this sort of material is the closest approach to background information, it is extremely important. A commercial service company in New York has recently started the publication of the New York State Legislative Annual⁷ which tries to collect these scattered bits of data into one volume. It has had an enthusiastic reception from lawyers and professors in that state.

The value of legislative material is so obviously vital

should it mean what its language reasonably conveys to those who are expected to obey it?" Jackson, *The Meaning of Statutes: What Congress Says or What the Court Says*, 34 A. B. A. J. 535, 538 (1948).

6. Frankfurter, *supra* note 4, at 542 (italics supplied).

7. New York Legislative Service, Inc., 299 Broadway, New York 7, N. Y. The first annual was for the 1946 session of the legislature.

to a lawyer, that it seems superfluous to spend time stressing the point.⁸ Yet it is unfortunately true that many libraries neglect this field, and many students are ignorant of it. One could wish that the authors of *Legal Bibliography and the Use of Law Books* had developed their chapter more fully.

Two other important chapters, new in this second edition, are on Administrative Law and Procedure and Administrative Rules and Regulations. Administrative law, of course, is the most fluid field of law, and usually most confusing to the young lawyer. Chapters X and XI attempt to explain the use of the leading tools, chief of which are the Federal Register and the Code of Federal Regulations. The authors must have written these chapters long before the date of publication of the book. For instance, they continually cite Graskie's Federal Reference Manual which was published in 1939 and was completely out of date by 1947. They refer to "annual" supplements to Graskie, when actually there was only one supplement, in 1940. They say of this outdated work that it is "One of the most satisfactory manuals for locating the rules of the administrative courts, bureaus, and commissions." Today the only "satisfactory," as well as accurate, way to locate administrative rules is by the use of the Federal Register and the Code of Federal Regulations. The authors discuss the last two publications,⁹ but they undermine the value of the Code by giving as an illustration a regulation of the Interior Department, which they say can be obtained "only by writing to the Secretary of the Inter-

8. However, Mr. Justice Jackson reminds us that the emphasis presently placed on legislative history

. . . has very practical consequences to the profession. The lawyer must consult all of the committee reports on the bill, and on all its antecedents, and all that its supporters and opponents said in debate, and then predict what part of the conflicting views will likely appeal to a majority of the Court. Only the lawyers of the capital or the most prosperous offices in the large cities can have all the necessary legislative material available. The average law office cannot afford to collect, house and index all this material. Its use by the Court puts knowledge of the law practically out of reach of all except the Government and a few law offices.

Jackson, *supra* note 5, at 538. In practice the task of gathering legislative material on a particular issue is probably less prodigious than Mr. Justice Jackson suggests. The essential documents can be located by number and the documents themselves obtained from any depository library.

9. Pp. 155-8.

ior."¹⁰ If they had looked in the Code they would have found the regulation in question.¹¹ It is unfortunate to create the impression that the Federal Register and the Code of Federal Regulations are not fulfilling their statutory functions.

Although it is true that any article on administrative law is likely to be out of date before it is published, it is unfortunate that the authors did not do some last minute revising of this chapter. It is strange indeed to find a book, dated 1947, discussing the Walter-Logan bill which was vetoed in 1940, but not mentioning the Federal Administrative Procedure Act, the cornerstone of present day administrative law, which was approved on June 11, 1946.

This volume is equipped with a pamphlet supplement of Assignments, to be used in legal bibliography courses. No assignments whatever are suggested for the chapters on Legislation, Administrative Law and Procedure, or Administrative Rules and Regulations. It is all too evident that these important fields of modern law have not been fully embraced into the fold. One can only hope that the professors who teach legal bibliography will be more advanced than the authors of *Legal Bibliography and the Use of Law Books*.

Elizabeth Finley†

10. Pp. 153-4.

11. 43 CODE FED. REGS. § 69.12 (Cum. Supp. 1943).

† Librarian, Covington, Burling, Rublee & Shorb, Washington, D. C.