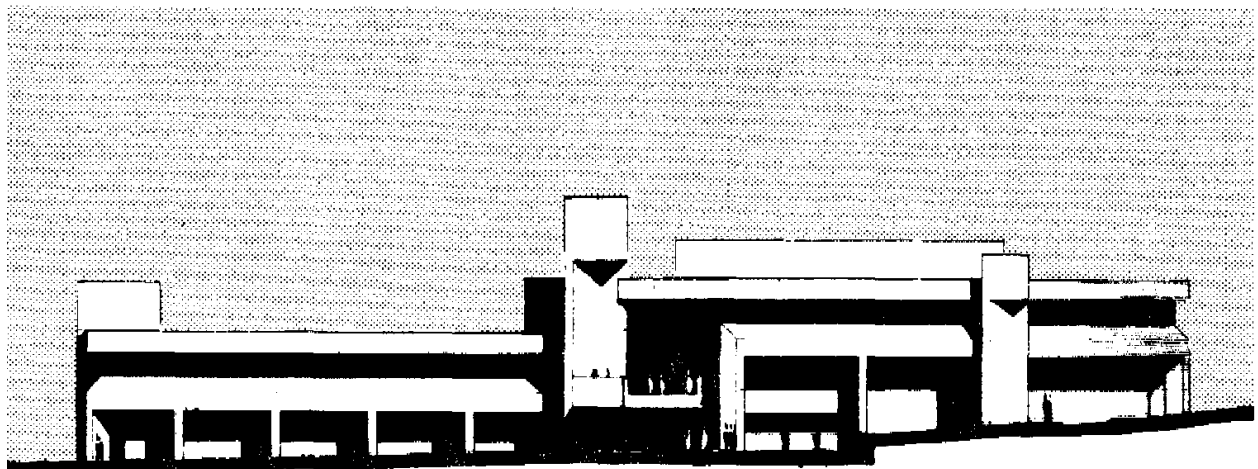


# A Historical Sketch of the State Law Library of Montana



A historical Sketch of the State Law Library of Montana, third Edition, 2020.

Written by Ashburn K. Barbour. Updated by Adeline J. Clarke, Judy A. Meadows, & Stephan J. Licitra

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## Preface to the Third edition

*It has been 33 years since Law Librarian Judith Meadows updated this historical sketch of the State Law Library of Montana. Since that time the world has only sped up. The law library's card catalog was replaced with an electronic catalog in 1991. In 2001, the library joined with 11 other libraries from across Montana to form the Montana Shared Catalog. In addition to printed books, the law library also collects and circulate, DVDs, CDs, databases and on-demand videos. Over the past 15 years the law library has systematically digitized and published; the Montana Supreme Court Opinions, and other legislative documents, which has enhanced and expanded the library's mission. We have also worked hard to update and enhance the court's website and our presence on the world wide web. The development of more powerful computers, databases, and the internet have forever changed the way we work. It is now easier than ever find and access legal information, both good and bad. Today Artificial Intelligence (AI) looks set to remake the practice of law yet again. Despite the changes, the law library remains committed to providing access to legal information and supporting the pursuit of justice for all.*

– Stephan J. Licitra, 2019

## Preface to the second edition

*The following historical sketch of the Montana State Law Library depicts the conditions surrounding the courts in Montana in her territorial days, and the growth of the law library since that time. It was prepared by Ashburn K. Barbour, a pioneer member of the Montana bar and a gentleman of legal and literary attainment who arrived in Helena in 1883, six years before Montana achieved statehood. He served as state law librarian for thirty-two years (1905-37), and devoted years of research in bringing together information gleaned from original documents and illuminated by personal recollections.*

*Mr. Barbour died before his report was completed. His successor, State Law Librarian Adeline J. Clarke (1937-54), assembled and edited his notes and writings, and presented them to her board of trustees in 1938. The Chief Justice of the Montana Supreme Court at the time, O.F. Goddard, recommended that the historical sketch be printed, as "nothing on this subject has ever been written in this state before." Few law libraries are fortunate enough to have such unique and interesting histories available to them. It is my hope that Mr. Barbour's history will, in his words, "awaken an interest in or create an appreciation for the value of all law libraries which have been established, protected, and nourished against discouraging odds." -- Judith A. Meadows, 1986.*

## Explanation for the first\* edition

*Attached to these reports, is a historical sketch of the Montana State Law Library by Mr. Ashburn K. Barbour, which depicts the conditions surrounding the courts in Montana in territorial days and the growth of the law library since that time. As nothing on this subject has ever been written in this state before, it is recommended that this sketch and the report of the library for the years 1935-1936 and 1937-1938 be printed, the cost to be paid from library funds. – O. F. Goddard, 1938.*

\*The "first" edition of this sketch was appended to the back of the 1938, *Biennial reports of the chairman of the board of trustees and of the librarian of the Montana State Law library.*

***“No greater service to the  
commonwealth could be performed by  
this library than to help instruct and  
educate our lay citizens in those  
fundamental principles upon which all  
statutory law should be constructed, as  
well as the historical experience of  
mankind regarding any of such  
proposed measures.”***

***-Ashburn K. Barbour, 1914***



## Law Library Mission

The mission of the State Law Library of Montana is to provide legal information and resources, to enhance knowledge of the law and court system, and to facilitate equal access to justice, statewide.

## History of Montana

*History as written by Ashburn K. Barbour, 1938.*

Montana Territory, carved mainly out of the Territory of Idaho, was created by an act of the US Congress approved May 26, 1864.<sup>1</sup> That Act was later known as the “Organic Act” and was for all practicality the constitution of the Territory. The Organic Act together with the Constitution of the United States and a few fragmentary acts of congress were all the law in force in Territory of Montana had at the time of its organization.

There was no common law in Montana, as there had been no legislative session to adopt it. Further the federal government had never adopted the common law as a part of its legal system. The few acts of Congress pertaining to mining were not applicable in the western territory, nor was there any federal laws concerning the use of waters within the public domain, acquiring, logging, or trespassing on public lands.

The first federal law concerning acquisition of water rights on public domain was enacted in 1866<sup>2</sup>. That Act simply recognized such rights as established by custom and maintained by the courts of the Pacific states and territories.<sup>3</sup> The act was also the first general law passed by the US Congress, under which title might be acquired to any of the public mineral lands within what are known as precious mineral-bearing states and territories<sup>4</sup>. As to the agricultural, grazing, and timber lands within the Territory of Montana, there were no federal acts controlling the same, and none of those lands had been surveyed at that date.

A set of emergency mining rules had been adopted by the miners of Virginia City and were enforced by the mining court established there. Later the territorial and federal courts recognized these local mining rules and customs as adopted by early mining communities before the congressional act become law. This was the state of the law in Montana before the arrival of its first judges in 1864.

## The First judges arrive

The first three judges to sit on the Montana Supreme Bench were appointed by President Abraham Lincoln, under Article 4 of the United States Constitution. They were: Hezekiah L. Hosmer, Chief Justice; Lorenzo P. Williston; and Lyman E. Munson, Associate Justices. Hosmer and Williston arrived in Virginia City in the summer of 1864. Munson came to Helena some months later (March 1865) to fill the Associate Justiceship to which Ammi Giddings had previously been named by President Lincoln but for which he had refused to qualify. These pioneer jurists would serve as district judges as well as federal district and circuit judges.

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<sup>1</sup> United States Statutes At Large. Volume 13, Chapter 95, page 85, May 26, 1864.

<sup>2</sup> United States Statutes at Large. Volume 14, Chapter 262, Section 9, page 253, July 26, 1866.

<sup>3</sup> Yale, Gregory (1867). *Legal Titles to Mining Claims and Water Rights in California*, page 139.

<sup>4</sup> Lindley, Curtis H. (1914). *A Treatise on the American Law relating to Mines and Mineral Lands*, Volume 1, page 89.

Judge Hosmer had been admitted to the bar in the state of Ohio and had practiced law there for a brief time but had worked principally in the newspaper and literary fields before his appointment as a Montana Territorial Judge. He had also held an office in the Department of the Interior. These experiences afforded him a broad acquaintance with men and business affairs. His literary acquirements were broad, and he lectured upon political and literary subjects impressively.

Judge Williston had practiced at the bar in Pennsylvania and Ohio and had acquired a good deal of knowledge of common law at a time when case and statutory laws were not so much in vogue as they became in later times.

Judge Munson had a more extended experience in the practice of law. A native of Berkshire County, Massachusetts, and a graduate of Yale University Law School, he had practiced law in the New England states. It is interesting to note that during the night previous to his arrival in Montana to administer the law, the eighth hanging had taken place on the already famous Hangman's Tree on the corner of Blake and Third Streets in Helena. This no doubt was a disturbing incident to a gentleman just arriving from a section where such matters were handled by courts of law. However, he concluded, after residing among and communicating with the people of his new home, that the extermination of outlaws by the Vigilance Committee had been both necessary and justifiable. He held a term of the district court at Helena during the summer of 1865, and on July 31, 1865, while addressing a grand jury, declared that whatever excuse there might have been before for secret trials and midnight executions, as courts had now been organized, the necessity of such measures had passed away; and he firmly admonished the jury and citizens in general to thenceforth uphold and support the courts.<sup>5</sup>

The federal government appointed these judges and sent them out to the Territory with the command to organize the courts and to adjudge the civil controversies but, without any laws to enforce, save the federal criminal laws, or by which to be guided in the organization and conduct of those courts – a most extraordinary situation. The only available law book was a paperbound pamphlet containing the acts of the Idaho legislature passed the previous winter. The moment Montana became a separate territory the Idaho laws lost all force and effect within the boundaries of Montana. No books, no libraries, no laws.

Instinctively, the newly organized court turned to the bar for suggestions and advice. Fortunately, there were many young lawyers in Virginia City whose judgment and advice were worthy of consideration. After several evenings of stormy and noisy debate in the dining room of the old Planters Hotel in Virginia City this joint meeting of the members of the court and bar agreed to adopt the Idaho code for use until the legislature should convene the next fall.<sup>6</sup>

“For several evenings the dining room of the Planters' Hotel heard echoes from the time of the Decemviri down to and including the late statute of the Territory of Idaho,” says J.H. Hosmer, son of the Chief Justice, in a revision of an article written by his father describing those early epochal meetings<sup>7</sup>. This adoption of the Idaho code greatly relieved the stress, but nevertheless the judges were often

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<sup>5</sup> Munson, L. E. (1907). *Pioneer life on American Frontier, Experience of a federal justice and the trail of the prairie schooners carrying the law into the western wilderness*. The Journal of American History, volume 1, page 106.

<sup>6</sup> Hosmer, J. H. (1900). *Biographical sketch of Hezekiah L. Hosmer*. Contributions of the Historical Society of Montana with its transactions, officers and members, volume 3, page 293.

<sup>7</sup> Hosmer, J. H. (1900). *Biographical sketch of Hezekiah L. Hosmer*. Contributions of the Historical Society of Montana with its transactions, officers and members, volume 3, page 293.

compelled to resort to those general principles of law which had become familiar to them in eastern communities where conditions were vastly different from those prevailing in the western territory.

## **Establishment of the law**

About the time of the organization of the Territorial courts, the copy of the Idaho Civil and Criminal Practice Act was in such great demand and in such constant use that it shortly fell to pieces. In the history of Montana, there is no single law book which has made such an indelible impression upon our legal system. Its usefulness had not entirely subsided by 1935, as both bench and bar still frequently resort to searching for the origin and history of the laws of Montana.

Correspondence of Sidney Edgerton, first governor of Montana Territory, shows that prior to the meeting of the Bannack legislature he had to dispatch David D. Chamberlain to Lewiston, Idaho to obtain new copies of the laws of that territory for use by the Montana legislative assembly. The legislature appropriated the sum of \$300 to compensate Chamberlain for this service<sup>8</sup>.

It is possible that there was, somewhere in the vast territorial domain, a few law books which had been tucked away in the abbreviated baggage of some lawyer immigrating to the new territory. However, none of these seems to have come to light for many months after the organization of the court. It is remarkable too that the federal government, which appointed judges to adjudge legal controversies of a people, did not furnish them with a few facilities to assist them in the performance of their important duties.

## **Establishing the Law Library**

From the establishment of the Montana Territory, there was an intense need and desire for a territorial law library. Yet, several years would elapse before that desire would be satisfied. Judging from the frequent utterances of the legislature, it appears that an urgent need for a law library was constantly felt by many. For while the Territory had a very limited revenue and no money with which to purchase a law library, the legislative assembly was constantly passing resolutions for the payment of freight and express upon law books, which they were apparently expecting from some source, especially U.S. Congress.

The first legislative assembly, which met in November 1864, made no provision whatsoever for acquisition of a law library. It was not entirely unconscious, however, of the desirability of such an institution and seems to have had some dream or vision that a territorial library already existed. For oddly, in prescribing the duties of the Territorial auditor, the law stated that he should keep in his office at the seat of government "in connection with the library of the territory<sup>9</sup>." That provision, however, evidently arose from the fact that the session simply copied bodily the Idaho law, which also provided that the auditor should be territorial librarian. The latter provision was re-enacted several times, so that subsequent sessions apparently became obsessed with the belief that Montana already had a law library. Legislators at the first session, however, created the Montana Historical Society<sup>10</sup>, showing a greater anxiety to have a depository for a biographical account of themselves than to provide means whereby their courts could function intelligently.

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<sup>8</sup> Acts, Resolutions and Memorials of the Territory of Montana, passed in 1864, page 573.

<sup>9</sup> Acts, Resolutions and Memorials of the Territory of Montana, passed in 1864, page 453, section 6.

<sup>10</sup> Acts, Resolutions and Memorials of the Territory of Montana, passed in 1864, page 620.

The second session, held in March 1866, manifested interest in the establishment of a law library by passing a joint memorial to Congress, reciting it had been reliably informed that “an appropriation was made by Congress for a territorial library for Montana and that said library had been purchased and put in charge of a government official appointed for this Territory, that although said official had arrived in this Territory, and departed from it again, the said library had not come to hand,” and praying Congress to appropriate a sufficient fund to purchase a territorial library and “place it in charge of a discreet and proper person, to be sent in his charge, to the Librarian of the Territory, where it is, at this time needed.”<sup>11</sup>

The third session (November 1866) apparently was of the impression that the prayer of the second session would be granted. It made appropriation, by joint resolution, authorizing and requiring the territorial auditor to pay any freight or express charges on any books or library belonging to the territory, “not exceeding the sum of \$500.00<sup>12</sup>.” We cannot find any account of congressional action in the matter and no indication that a library arrived from any source. The legislature, however, was evidently anxious that any library should not be lost, strayed, or stolen.

The fourth session (1867) made still another gesture in anticipation of paying for carriage upon books, which again never arrived. On December 24, 1867 a resolution was passed by the legislature directing the auditor to pay to J. J. Roe & Company the sum of \$600.<sup>13</sup> If the books had arrived prior to the passage of the resolution, it is obvious the exact amount due would have been known to the legislature and name in the resolution.

Honorable Samuel F. Word at this session introduced House Bill No. 26, providing for establishment of a territorial library. The bill, on report of committee, was indefinitely postponed. As a member of the early territorial bar Mr. Word was evidently appreciative of the need of such a library and recognized that some steps should be taken toward its establishment.

Finally, however, after many years of seeming neglect, the U.S. Congress yielded to the supplication of the new western territories for law libraries for use by territorial courts. In 1870, the sum of \$2,500 was appropriated by Congress for each of five territories, including Montana, for the purchase of law libraries.<sup>14</sup> Montana’s first books provided by Congress likely arrived in 1871<sup>15</sup>. And that was the foundation and beginning of our present State Law Library. No record of the number or character of those books can be found, but it is fair to presume that the United States Supreme Court Reports were included down to and including the Ninth Wallace, a few of the U.S. Statutes-at-Large, and the Revision of 1815. We cannot venture a guess as to the other volumes. Nor is any record available as to where these books were housed in Virginia City, where the capital remained until 1875 when it was moved to Helena.

We have been unable to discover any books donated to the library, prior to the year 1870, except for one volume, a copy of the U.S. Law Register, a lawyers’ directory, published in 1866. According to an

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<sup>11</sup> Laws of the Territory of Montana, 2nd session, 1866, Joint Memorial to Congress, page 47.

<sup>12</sup> Laws of the Territory of Montana, 3rd session, 1866, Joint Resolution no.7, page 87.

<sup>13</sup> General Laws and Memorials and Resolutions of the Territory of Montana, 4<sup>th</sup> session, 1867, page 275.

<sup>14</sup> United States Statutes at Large. Volume 16, Chapter 292, page 306, July 15, 1870.

<sup>15</sup> United States Statutes at Large. Volume 16, Chapter 115, page 518, March 3, 1871.



inscription on the inner front cover, it was donated by the Honorable Green Clay Smith, Governor of the Territory, December 10, 1866, and bears his autograph. The publication could not be called a law book. It contains lists of attorneys throughout the country, terms of various courts, names of state and county officers, and the type of literature commonly found in the present lawyer's directories.

## The new books arrive

The first appropriation by a Montana legislature for the purchase of books was at the session of 1873. The amount provided was \$200 per annum and was "for the purchase of law reports in continuation of the series now in the Territorial Law Library."<sup>16</sup> This appropriation continued through the year 1878. For the years 1879 to 1882 the appropriation was \$100 per annum. For the succeeding two years the appropriation was \$300 annually; however, in 1883, there was an additional appropriation of \$2,00 for the purchase of books, which was the first substantial appropriation made by the territorial legislature for the law library.

At the time the first appropriation was made (1873) the library was under the supervision of the Justices of the Supreme Court, and the territorial auditor was ex-officio librarian. The justices were required to make an annual report to the Governor. The legislative assembly showed its supreme confidence in the gentlemen by providing that the territorial auditor should have the authority, if he saw fit, to require them to give security for the faithful application of that magnificent annual appropriation of \$200.<sup>17</sup>

The State Auditor was the ex-officio librarian until the organization of the Montana State Library by the Montana Legislature in 1881. He was a mere custodian of books, but apparently not a good keeper. Governor Potts, calling legislative attention to the report of the library board for the years 1874-75, said: "The report contains no information as to the condition of the library except that the books are scattered, and that the appropriation of 1875 had not been expended. It appears to me that you should not hesitate to provide a law for the organization of a Territorial library, with rules and regulations for its government... and a librarian appointed to call the books together."<sup>18</sup>

Governor Potts was a lawyer, and during the War of Rebellion (the US Civil War) served as a commanding officer and disciplinarian. Doubtlessly, dispersion and disorder were distasteful to him (even in a law library). The legislature took no action on his recommendations or otherwise, until the 1881, when the legislature created the "Montana Library." That act was introduced in the Territorial Council by the Honorable Joseph K. Toole, a prominent lawyer of the time who would later become governor of Montana.

## Ordering of the Law Library

In 1881 an act was passed incorporating the Montana Library, making it a department of state consisting of two divisions, the Historical and Miscellaneous Division and the Law Division<sup>19</sup>. The latter embraced all the books, reports and legal literature belonging to the Territory. The judges of the Supreme Court were to constitute a board of directors of the Law Division and the Clerk of the Supreme Court, Mr. Isaac Alden, became ex-officio librarian at an annual salary of \$300 in addition to his salary as clerk. The prescribed duties of the librarian required him to make a catalogue of the books, to make all books on the inside cover and on the thirtieth page with the label "Montana Library – law division," and also to

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<sup>16</sup> Laws, Memorials and Resolutions of the Territory of Montana of 1873, page 36, section 3.

<sup>17</sup> Laws, Memorials and Resolutions of the Territory of Montana of 1873, page 36, section 3.

<sup>18</sup> House Journal of the ninth session of the Legislative Assembly of the Territory of Montana (1876) page 38-39.

<sup>19</sup> Laws, Memorials and Resolutions of the Territory of Montana of 1881, page 60-64.

make an annual report to the Governor. Mr. Alden made the first catalogue of the law library which showed about 2,000 books, a number exceeded today by the New York and Pennsylvania Reports alone. Another provision of the Act was that any federal or state officer was privileged to borrow for either division, under such rules as might be prescribed by the board, but that all other persons be required to deposit with the librarian a sum equal to double the value of the book borrowed, and to return the book to the library within three weeks. If that rule prevailed today, single cash deposits would range from one hundred to one thousand dollars [about \$2,500 to \$25,000 in 2019]. The board of directors was authorized to rent a suitable room for the office of the Clerk of the Supreme Court, and \$250 was appropriated for office fixtures and furnishings suitable for the proper case and placing of books. No record can be found as to what rooms were rented for this purpose.

In 1887 the law governing the Montana Library was recodified and the Act of 1881 repealed.<sup>20</sup> However, many of the principal provisions of the earlier act were retained and the Secretary of the Territory was added to the board of trustees. In addition, the act of 1887 required the Governor to immediately appoint a librarian at a salary of \$50 a month. The annual appropriation for the law library was increased to \$400, and there was also an appropriation of \$3,000 “For the purpose of purchasing and filling up the broken sets of laws, reports, statutes and additional textbooks.”<sup>21</sup>

In compliance with the act, Governor Potts appointed Miss Lou Guthrie librarian on March 30, 1887. Miss Guthrie had served as librarian of the Helena City Library for many years during its infancy and acted as state law librarian until 1901 when she retired, having been a very courteous and accommodating librarian, and greatly respected. Miss Guthrie died at Emmetsburg, Maryland, in 1915<sup>22</sup>.

In the early part of the year 1883, the library consisted of not more than 2,500 volumes. At the time Miss Guthrie was appointed in 1887, that library possessed 3,250 volumes. That number represented the growth of the library during the years 1871 to 1887, a period of sixteen years, being at an average of 203 volumes each year. A second catalogue of the law library was made in 1888 by W.F. Wheeler, Esq., librarian of the Historical Division. Miss Guthrie issued a third catalogue in 1895 and a fourth in 1898, and with the assistance of Mr. August C. Schneider, court reporter for the state Supreme Court and a member of the Montana bar, prepared another catalogue in 1901 which listed 10,000 volumes. No accession books or books of accounts were maintained in the library until one year prior to Miss Guthrie’s retirement. However, she made biennial reports to the board of trustees in which all books purchased during such period were supposed to be enumerated.

At the time of Miss Guthrie’s retirement, the technical work required to further advance and systematize the library had so greatly increased that it demanded someone of legal training and experience to properly perform the duties of librarian and build the library to such a stage that it would be fully abreast of the times.

Mr. Oliver T. Crane was appointed to the office of state law librarian in the year 1902 and served until January 1, 1905. He was a gentleman of both legal and literary training and experience, a graduate of Yale University, and a member of the Montana bar with some years of active practice. During the entire period of his incumbency as librarian he was also Supreme Court Reporter and Marshal – consequently a very busy man. Notwithstanding his many other duties, he accomplished a great amount of needed

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<sup>20</sup> Compiled Statutes of Montana (1888), Chapter 91, page 1063-1067.

<sup>21</sup> Compiled Statutes of Montana (1888), Chapter 91, section 1534, page 1067.

<sup>22</sup> Contributions to the Historical Society of Montana, volume 8, (1917), page 351.

work in the library: arranged and systematized it, selected, and accessioned many law books and other literature. Upon his retirement, after some two years or more of intelligent labor, the library was left in much better condition.

In November 1904, Mr. Crane prepared a supplement to the catalogue of 1901 in which 2,000 additional books were listed. He also instituted the card catalogue system [which was maintained until 2015 when it was decommissioned.] All the books in the library since 1907 or 1908, have been listed and catalogued in a card catalog, giving the full title, date and place of publication, and, if textbooks, full name of the author. These books are cross-indexed whenever such can be of any possible assistance.

In 1893 the Miscellaneous Division of the Montana State Library was transferred to the Library of the Historical Society of the State of Montana<sup>23</sup> leaving just the State Law Library. That same year the Legislature created the law library fund, which took twenty percent of fees of the Clerk of the Supreme Court.<sup>24</sup>

In 1895 the laws of Montana were recodified. At the time of the revision the code commissioners were learned and prominent members of the Montana bar. They appreciated law libraries and understood the hesitancy of legislative bodies in appropriating enough money to meet the library's urgent needs and render it reasonably efficient. So, they added a provision to the effect that the fees of the office of the Secretary of State should be paid into the permanent fund of the law library.<sup>25</sup> These amounts were large. This provision of the code escaped the notice of the trustees of the library as well as the executive departments of state until the fund had grown to very large proportions.

When the discovery was made by Mr. Crane, the library board maintained that it was their legal right to use the entire accumulated fund for the benefit of the library, and that it was much in need of the money. The executive branch of the state became very much perturbed over the matter, claiming that the expenditure of so much money by the library would wreck the finances of the state, and the Governor is said to have threatened to call a special session of the Legislature to repeal that portion of the law and have the money diverted to the state's general fund.

As it was not possible for the library to judiciously expend the fund before the legislature could convene, and it all likelihood deprive it of the money, the board finally compromised the matter by agreeing to accept a much lesser portion of the money, which they proceeded to immediately invest in books and other literature, fearing to lose the entire accumulation. Three thousand dollars was the compromised amount which the library received. Mr. Crane was librarian at the time the money came into possession of the library and expended it with much skill and sound judgment. In 1903 the law was amended to provide the fees of the Secretary of State should thereafter be paid into the general fund and not into the library fund account.

When Ashburn Barbour became the law librarian, succeeding Mr. Crane, the annual appropriation for the purchase of books was \$750. While Mr. Crane had accessioned all the books possible with the funds provided, the appropriations had not been sufficient to keep the library abreast of the times. Many important and much needed reports and other books had not been purchased and many of sets of state reports were far from being complete. It was very apparent that if the state was to possess a law library

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<sup>23</sup> Laws, Resolutions, and Memorial of the State of Montana (1893), page 63.

<sup>24</sup> The Complete Codes and Statutes of the State of Montana (1895), page 66, section 872.

<sup>25</sup> Political Code of Montana, 1895, section 2389

that could meet the demands of the courts and servants of the state, not to mention the bar, it would be necessary to persuade the Legislature to supply more money.

The library board was composed mainly of the Justices of the Supreme Court, who for reasons best known to themselves refrained from going to the Legislature and requesting enough appropriations to meet the urgent needs of the library. That duty then fell to the librarian, who, after some hectic encounters, succeeded in getting the appropriation for 1907 and 1908 raised to \$1,500 per annum. Gradually, the book appropriation was increased to \$3,000 annually. These appropriations, together with the money derived from the twenty percent of the fees of the Clerk of the Supreme Court, enabled the librarian to complete many broken sets of reports, to purchase sets of recently published annotated reports, citators, and digests lacking in the library, and to bring the library abreast of the times in current textbooks and in other much desired literature. The English Reports were completed; the Irish and Scottish reports were acquired, as well as many of the Canadian reports; and a fuller set of Canadian session laws and revisions was collected than any which at the time could be found in any library in that dominion.

By an act of the legislative assembly of 1917 an annual license tax was imposed on every attorney at law practicing within the state. The money derived from the Lawyers' License Tax were to be first, used for the cost of examination of applicants for admission to the bar, as well for the prosecution of members of the bar for nonprofessional conduct. The balance of the fund was then transferred annually on the thirty-first day of March to the Library Permanent Fund account, and the Law Library would use it to purchase of law books and for other expenses.

A detailed enumeration of various appropriations would be quite tiresome. It is enough to say that the library developed slowly. The total amount expended for purchase of books and literature for the law library during the sixty-seven years, 1864-1930, inclusive, was \$121,855.92 [\$1.9 million in 2019], as nearly as can possibly be ascertained. This amount includes federal expenditures, moneys received by legislative appropriation, moneys paid out from the Library Permanent Fund, and the amount obtained in settlement of the controversy arising over the fees of the secretary of state. After 1922 no appropriations were made for the purchase of books; the Law Library Fund account having supplied all money expended.

The amount of money put into the purchase of books does not by any means represent the total value of the law library, as at least fifty percent of the books accessioned have been received by way of exchange from sister states and other institutions.

## **A home for the law library**

When the law librarian, Ashburn Barbour, arrived in Helena in 1883, the library was located in the old Alden Building, across the street and west from the old stone courthouse of Lewis and Clark County. The Alden building still stands in 2019 and is now used as an apartment house. Where the law library was in Helena prior to 1883, is unknown.

Mr. Isaac R. Alden was the Clerk of the Supreme Court and ex-officio librarian. He had been a practitioner at the bar in the East prior this appointment as Clerk of the Montana Supreme Court, and it was the territory's good fortune to have a man so well qualified to fill such a position during the early formative period of the library's existence, in conjunction with the Chief Justice, the Honorable Decius S. Wade, a man of legal and literary attainments. Associated Justices of the Supreme Court during this time

were Hiram Knowles, Francis G. Servis, and Henry N. Blake. Those gentlemen were all well-equipped in legal lore and kindred literature, and doubtless the librarian received enlightened instruction from them regarding selection of books and other law library matters.

Terms of the Supreme Court were at that time held in the Lewis and Clark County Courthouse, which was later torn down after erection of the present building in 1884 and 1885. The new courthouse was planned with a view to housing, in addition to county offices and departments, the state government as soon as Montana should become a state. Quarters for the law library were provided on the third floor, where a dark, handsome, heavy set of books stacks was installed. There it remained until completion of the state capitol building in June 1902. The library was then moved to its first true home, a comparatively small room on the second floor, east of the main stairway in the new state house.

Soon after it became apparent that the shelf space provided here was insufficient to properly accommodate the books and they were piled up on every flat surface available. To meet this exigency, four new metallic bookcases, like those already in use, were purchased and put in place in 1903.

The east and west wings were added to the capitol building in 1910. Soon after the law library moved to the third floor of the east wing. The library quarters were well arranged from an architectural standpoint and were of ample proportions to accommodate it for a number of years to come. The room is beautifully lit and on the upper wall panels are paintings of Montana landscapes by the late Ralph DeCamp of Helena. The metallic reading tables are ample in size, affording an agreeable place for study.

## **The Legislative reference bureau**

A Legislative Reference Bureau was created in 1909<sup>26</sup> and attached to the Historical and Miscellaneous Department of the Montana State Library, where it remained until 1921. It was then removed by legislature and became part of the law library. Mrs. Adeline J. Clarke was appointed Legislative Reference Librarian and Assistant Law Librarian when the bureau was made a part of the law library.

Much valuable work was done in the bureau while it was attached to the Historical Department of the state library, and considerable material was collected. It was a wise and economical move on the part of the Legislature to attach that bureau to the law library inasmuch as a great amount of legal literature essential to a legislative reference department is to be found in the law library, and the move obviated much duplication.

## **The library collection**

The estimated number of books constituting the law library in 1930 was 65,000 volumes. About one-eighth of that collection was comprised of statutory law. Very few libraries in the United States possessed complete collections of all the session laws of the various states at the time. In the Montana Law Library, the collection of session laws published since the year 1815 by the colonies and the older states is complete either in the original copies or the official reprints, except for perhaps forty sessions. The missing volumes were all very rare, and it is only occasionally that one of them is obtainable. The library did not endeavor to collect all the private or the local laws of the various states.

Thomas Jefferson during the Virginia colonial period tried to make a collection of all the session laws of that colony for use of the bench and bar and of the historians of Virginia and older colonies. He said, he

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<sup>26</sup> Laws, Resolutions and Memorials of the State of Montana, 1909, Chapter 65.

“spared neither time, trouble, nor expense to gather laws that were on the point of being lost, as existing only in single copies in the hands of careful or curious individuals, on whose deaths they would probably be used for waste paper.”<sup>27</sup> Thus, Jefferson showed his conception of their importance for all of time. Nearly one hundred years elapsed before a few of the larger libraries undertook the assembling of such collections and proceeded to acquire all that could be found in the market. It is told that a scholarly federal judge in Nevada Territory was the pioneer of the movement.

It was stated 1930, by an expert in the matter of American statutory law, that the collection of such books in the library alone was worth not less than \$250,000 (\$3.8 million in 2019), and deducting from that sum the amount of \$121,855.92, the amount expended for the purchase of books by the state and federal governments, we have the sum of \$128,144.08 as net profit, derived from the operation of assembling the law library. In other words, the collection, measured by its then market value was worth more than twice the entire sum invested by the state in law books.

In addition to the American statutory law, the library held excellent collection of statutory laws of the Dominion of Canada, including many rare volumes. The Canadian laws were not counted towards the above-mentioned market values of the collection of American statutory law, but in themselves are worth several thousand dollars more than they cost the state. Included also in the statutory collection are all federal statutes from the organization of the federal government and all the general laws of Great Britain since the Norman Conquest.

It has been an interesting quest to ascertain what books were in the small collection, if any, composing the library before the purchase made by the federal government in 1870, or what books were included in that purchase, as that appears to be the real start of the library. For the purpose of answering these inquiries we have examined many sets of reports now in the library.

The Supreme Court did not begin to print opinions until 1868. Before 1868 it rendered opinions orally and very few of them were ever written down and those few have been lost or destroyed.

By consulting the opinions published in volume 1 of the Montana Reports (commencing in 1868), we find the decisions of various courts cited. We know that several sets of the reports containing such opinions were not in the law library at that time. The first thirty-two volumes of the California Reports owned by the law library are reprints and were not issued until 1870 and thereafter. Nevertheless, the court freely cited cases decided by that Supreme Court.

For example, in the Montana Supreme Court opinion of the case of *Carrhart, Administrator vs. Montana Mineral Land & Mining Company*, 1 Mont. 243, decided at the August term, 1870, it cited cases from the California, Illinois, and Missouri Supreme Courts as well as from the *English Common Law Reports*. That opinion was written by Justice Symes who sat first as an Associated Justice during the August term, 1869, and who was a man of no mean ability. At that date the law library did not contain a single volume containing any case so cited. The *Illinois Reports* possessed by the library is a reprint edition, copyrighted in 1870. Our earlier volumes of the *Missouri Reports* seem to be of the original edition; two volumes of the set evidently had been property of the Honorable Decius S. Wade, and he did not become a citizen of Montana and a Justice of our Supreme Court until 1871.

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<sup>27</sup>Letter from Thomas Jefferson to George Wythe, January 16, 1796. Retrieved from the Library of Congress, ([www.loc.gov/item/mtjib008586/](http://www.loc.gov/item/mtjib008586/)).

Those volumes at least were not in the library in 1870. The *English Common Law Reports* is an American reprint of selected English cases, printed between the years 1857 and 1872 in Philadelphia. This set of books is marked as being the first set of books accessioned by the "Montana Library, Law Division" which was created by Act of 1881, and so could not possibly have been in the Territorial Library in 1870. The books which were in the library prior to the year 1881 were marked by the brand "Montana" burned in the sheep binding. The Act of 1881 prescribed that all books should be marked with a stamp bearing the inscription "Montana Library, law division" so we reasonably conclude that no book marked with the new rubber stamp was procured prior to 1881. We find many of the books containing cases cited by the court in the above-named opinion were branded after 1881 and were not in the library prior to that date. It might be inferred that the Court cited many cases to which it did not have access, but knowing that several members of the bar had accumulated libraries of a few hundred books prior to 1870, seems that the Court resorted to the private libraries of members of the bar.

The citations of authority in the briefs of counsel were generally to textbooks, and sometimes to cases cited in footnotes of the authors without the report being available. Along with the California citations during 1869 there began to appear citations to cases in the *New York Reports*, and in 1870 citations of Massachusetts cases, and now and then a case from Illinois. Up to this date no mention can be found of a territorial library. It is evident, however, that the bar as it prospered, had begun to purchase reports of several states for their private libraries. In 1883 when Mr. Barbour came to Montana, he found several private law libraries containing quite extensive accumulations of books, some closely rivaling the Territorial collection of that period, and a bar which would do credit to any eastern city or state.

These references to the citations by our early courts is in no way intended to cast the slightest reflection upon their action, but simply to call attention to the desperate and embarrassing situation under which they labored, and the reference to the different brands or stamps is made in an effort to show what books were in the library during the different periods of their use.

## **The war years, 1910-50s**

*The following information comes from the biannual reports of State Law Library, 1906-1954.*

In the early 1910s the law library focused on developing its core collections. This included the session laws of every state in the union, the law reports of other English Common Law jurisdictions (Canada, and the United Kingdom). Many of these reports were in great demand and frequently cited. The library also began to slowly build up its law journal and law periodical collections. These were important because they discussed many important topics that were just developing, written by some of the best writers in the country. Of course, with more books come more patrons and the need for more space. For this reason, the law library moved sometime after 1910 into the east wing of the capitol building and for many years after continued to request money to purchase new shelves for the new books.

This growth was checked somewhat by World War I, as fewer books were published in this period. At the same time, the courts were increasingly called upon to adjudicate on themes completely new to the law. In this situation the courts had to depend on precedent from other jurisdictions until American law had caught up. This slowdown was short lived and after the war, publication picked back up. The continued growth of the collection and the greater demands on the time of the librarian resulted in a need for more staff so in 1921 an assistant librarian was added to the library. Ms. Adeline Clarke who was promoted from Assistant to Law Librarian in 1936.

During the 1930s and 1940s the law library put more attention towards buying case books, citators and encyclopedias. These tools greatly enabled anyone using the collection to traverse it much more quickly. Citators were especially helpful, as the law is continually growing and no one person could know it all. Henry Swinburne observed this fact, as had many others when he said,

*“Great and wonderful is the number of manifold writers of the civil and ecclesiastical laws and so huge is the multitude of their sundry sorts of books... that in my conceit, it is impossible for any one man to read over the hundredth part of their works though living an hundred years.”*

*-Henry Swinburne, Treatise of Testaments and last wills, 1803*

By 1946 the law library had acquired the entire collection of Shepard’s State Citators, to address this very issue.

Also, during the 1940s, more attention was given to the reporters of federal administrative boards and commissions to account for the increasing influence of these semi-judicial bodies. Budget constraints continued to be a concern; in 1938 the Montana Legislature increased the percent of fees allocated to the law library from the Attorneys’ Licensing Fund from 20 to 50 percent. War again slowed the growth of the law library. This time it was World War II, which caused shortage of supplies and materials and the decrease in the number of law books published.

In 1949, the law library, which had been a department of the state library, was separated and designated the State Law Library of Montana. It was placed in the control of a board of seven trustees, consisting of the Chief Justice and the Associate Justices of the Montana Supreme Court, the Montana Secretary of State and the Montana State Auditor.<sup>28</sup> In 1977 the above statute was amended to remove the Secretary of State and the State Auditor from the Board of Trustees.<sup>29</sup>

## **Years of growth and change, 1950-1990s**

Between the years 1949 and 1978 no biannual reports could be found. From what information we do have, we can speculate that the library experienced a period of quiet growth and outreach. The library, located in the capital building, was open all hours (a bit of a problem) and was staffed by two people. In 1956 Katherine Orchard was promoted from Assistant to Law Librarian. In 1976 Clarie Engel was promoted from library assistant to Law Librarian. In 1977 the law library gained the designation as a Federal Depository Library for federal documents distributed by the US Government Printing Office.

By 1978 the law library grown to approximately 55,000 volumes and in woefully in need of space. Also, an evaluation<sup>30</sup> of the law library conducted in 1979 found it to be grossly understaffed. The report recommended adding 5 new employees to the library. That year the library asked the Legislature for

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<sup>28</sup> Chapter 153, Laws of Montana of 1949.

<sup>29</sup> Chapter 142, Laws of Montana of 1977.

<sup>30</sup> Criminal Courts Technical Assistance Project grant. Evaluation of the Montana State Law library. 1979.



three more positions. This need for more staffing was due to a steady rise in library usage. In particular, the photocopying of materials for attorneys from across the state had risen substantially. Other pressures on the library's time were an increase in circulation of library materials and the rise in loose-leaf publications which resulted in an increase in filing time. The need to increase staffing for the law library was just not isolated to the law library alone, the Montana Judiciary Branch had also seen a rise in cases across the state<sup>31</sup> and needed more staff.

By 1980, the law library had expanded its collections to include the law database, Westlaw. The library paid to access the database for 20 hours per year for about \$20,000. The library card catalog was still used to track the books in its library, but the cards were downloaded and printed from the OCLC database, which was accessed from Carroll College. At the time the card catalog listed an estimated 75% of the library's holdings.<sup>32</sup>

To address the Law Library's pressing needs for more space, it, along with the Montana Supreme Court, the Montana Attorney General, and the Montana State Library moved into the new justice/state library building in 1983. The new law library was given two floors of modern fixtures, including compactable shelving. The library continued to purchase new titles in the traditional legal subjects of taxation and real estate in addition to titles in subjects never contemplated during Mr. Barbour's day. Such titles as equitable distribution and cable television are examples. The library also began to acquire materials in other formats about this time, including microform, audio, and video cassette. By this time, funding for library operations came entirely from the general fund.

A new Law Librarian, Judith A. Meadows, as was hired in 1984. She brought many new ideas and much energy to the library. Soon after her arrival the law library began to offer two new programs: one to support the continuing legal education needs of lawyers and the second to support access to legal databases across the state. Both programs were self-supported by their users. In September 1986 the library hosted a conference for the Western Pacific chapter of the American Association of Law Libraries. This involved much collaboration with nearby libraries but was ultimately considered a success. That same year the library by participating with other Helena librarians developed a network of telefacsimile machines (faxing) to deliver information across the state. In 1987, the legislature considered but ultimately rejected the question of whether to merge the state law library with the state library. This question was raised twice, once with an amendment to HB 2, the general appropriations bill, and again with HB 911.

In 1995, the law library began the process of moving to an automated library system for material acquisition and circulation. This move was needed to meet the high circulation of law library's books: a circulation which had increased by 600% since 1978.<sup>33</sup> It was estimated that this upgrade would save the library from having to hire a new employee to handle material loan requests. By 1996 the law library had its own webpage and was working hard to expand its content value and audience. The library's website development so early in the age of the internet was not random or incidental, rather it is another example of the library's continued attempt to reach the furthest corners of this great state. In 1998 the library began to host the pro-bono legal clinics to serve the needs of under-represented litigants in need of legal assistance. This program was in response to the steady increase of the general public using the library's services.

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<sup>31</sup> 1978 Annual Report, Montana Supreme Court.

<sup>32</sup> Criminal Courts Technical Assistance Project Grant. Evaluation of the Montana State Law library, 1979.

<sup>33</sup> 1993 biennium budget request for the State Law Library of Montana.

## A new millennium, 2000-2020

The law library, along with 12 other libraries found the Montana Shared Catalog in 2002. This state-wide consortium of libraries was created to maintain a shared library management system. In doing so, libraries hoped to reduce costs and improve the quality of their services. Again, this was not incidental but rather part of a concerted effort to collaborate with other libraries and to serve the legal needs of Montanans across the state. By 2003 the library reported that half its staff time was devoted to helping people access or find information on the internet. This included digitizing print materials, arranging materials on the website or helping patrons locate information online. Starting in 2005, the library started working capture the Montana Supreme Courts' oral arguments, first as audio then later as video. In 2013 Judith Meadows retired and the law library hired a new law librarian, Lisa Mecklenberg-Jackson. It was around this time that the law library began to expand its online services even more. In 2015 the library started live-streaming oral arguments and Continuing Legal Education programs. These presentations were later published, on the court's website. This meant that these presentations could be viewed by anyone with online access 24/7 365 day a year. Macklenberg-Jackson became the director of the Montana Innocence Project in April of 2016 and she was succeeded as Law Library Director by Sarah McClain in September 2016.

## Conclusion

More detailed research might easily result in a much longer story of growth of the Montana State Law Library. However, this short history, without doubt, has convinced the reader that the State Law Library of Montana and its collections should be forever cherished as representing a hard-won struggle against discouraging odds to meet the legal needs of the people of Montana.

The law library's staff has grown from one faithful part-timer to seven competent full-time staff. It includes professional librarians, responsible for cataloging and reference, clerks and computer technology professionals. The law library is supported and enhanced by many new legal treatises, modern technology and sound legal databases. We have acquired over 4000 new volumes each year and update hundreds more. The library sends copies of legal documents, forms, education materials, and legislative histories to all corners of the state whether by mail, fax, or email. Our online catalog is available anywhere in the world with internet access. And we routinely send requested materials across the country as part of our Interlibrary Loan program. The Staff of the law library are proud to serve this great state and help its citizens meet their legal needs.

Finally, as Adeline Clarke said in her 1938 annual report,

*“The library is in good working order. It meets the demands made upon it admirably, and the bench and bar and the citizens of Montana are fortunate in having this balanced and well selected collection of law books for their use.”<sup>34</sup>*

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<sup>34</sup> Biennial reports of the Chairman of the Board of trustees and the librarian of the Montana State Law Library, (1938), page 7.

*“It sometimes becomes necessary, in order to thoroughly understand and clearly present to a court a particular angle or phrase of law, to resort to these ‘old musty books’. Law is not always founded upon reason, or upon natural or Divine justice, but frequently upon institutions, and reasoning or logic will not always lead us to correct conclusions of what the law is, or why it is, and it becomes necessary to resort to these fountain heads to learn its origin, application and development.”*

*-Ashburn K. Barbour, 1918*



## State Law Librarians of Montana

Isaac R. Alden (ex-officio)	1881-1887
Lou Guthrie	1887-1901
Oliver Crane	1902-1904
Ashburn Barbour	1905-1937
Adeline Clarke	1937-1956
Katherine Orchard	1956-1976
Claire Engle	1976-1984
Judith Meadows	1984-2013
Lisa Mecklenberg-Jackson	2013-2016
Sarah McClain	2016-present

Founded: 1866

Oldest book: La Graunde Abridement, by Sir Robert Brooke, 1565.

Largest book: Webster's New International Dictionary of the English Language, 1934.

Tallest book: Mexican Boundary Commission Atlas, 1909

Largest set: US Congressional Serial Set ~15,000 volumes

Longest serving librarian: Ashburn Barbour

Longest serving employee: Adeline Clarke

Annual budget 2020: \$870,000/year

Staff size in 2020: 7 people