LAW LIBRARIES AND THE CONSTITUTION

AALL ARCHIVES EXHIBIT, 1987

Charles Evans Hughes once observed that the Constitution means what the Supreme Court says it means... The great prestige of the Court is due largely to its accepted position as ultimate interpreter of the Constitution. Law librarians have played an important role in safeguarding and providing access to the documents of Constitutional interpretation.

As part of the celebration of the bicentennial of the federal Constitution, this year's exhibit from the American Association of Law Libraries Archives is focused on the relationship between law libraries, librarianship and constitutional issues and studies. The exhibit begins with a reference to law libraries at the time the Constitution was drafted. It then traces selected constitutional issues and studies through AALL's eighty-year history.

THE CONSTITUTION AND ITS INTERPRETATION

Formation of the Judiciary. Article III of the Constitution states: "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish." However, it required Congressional action to turn this bare outline into a functioning judicial establishment. Through the Judiciary Act of 1789 Congress created the federal court system, and within fourteen years of the Act's passage, a Supreme Court, dominated by Chief Justice Marshall, had successfully established its authority to invalidate Acts of Congress. Since the time of Marbury vs. Madison, a corpus of legal literature documenting the process of judicial review has come under the purview of law librarians.

Item 1


Thomas Jefferson, founding father, statesman, and architect of First Amendment freedoms, was deeply concerned with libraries as resources for the leaders of our nation. In letters to Robert Skipwith and Samuel Harrison Smith, Thomas Jefferson explained his theory of book collecting practices and selection. His list of books recommended for a statesman's library included the major legal texts of his day.

Item 2


Item 3


Item 4

According to C. Herman Pritchett (The American Constitution), interpretation of the Constitution has been based on several elements: historical evidence of the framers' intent, textual analysis of the Constitution's language, and application of the rules of logic. All play an important role in understanding the document, but neither alone nor in combination do they supply a complete interpretation of the Constitution. There is a further factor, which Justice Holmes called "experience." Pritchett has written that ". . . the intention of the framers is surely part of that experience but . . . this approach recognizes the right of each generation to adapt the Constitution to its own needs, to the extent that such adaptations are reconcilable with the language of the Constitution." Law librarians have been called to play an expanding role in providing relevant research documents for legal scholars and historians.

**Item 5**

In a 1976 Law Library Journal article, Morton J. Horowitz identified the elements of interpretation found in recent revisions of constitutional history. It has been suggested that law librarians be the custodians of such social and political documents of experience. Law librarians may be asked to serve as researchers and guides through the social and political, as well as legal, history of our Nation.

**Item 6**

Displayed here are reprints of examples of the pamphlet and essay literature written at the time the Constitution was drafted. Horowitz saw such documents of social and political history as critical to the study of constitutional development supplementing case law and legislation.

**Item 7**

Julius Marke's 1977 Vignettes of Legal History focused on landmark federal constitutional decisions. Holding that legal research is more than case law, Marke advocated examination of the social and historical context surrounding a particular case to discover its significance and the Supreme Court's intent.

**THE CONSTITUTION AND PRACTICAL ISSUES OF LAW LIBRARIANSHIP**

The AALL's mission has been interpreted as an obligation to be the primary and constant provider of the materials and teacher of the methods of legal research. This has been accomplished by providing access to the primary and secondary sources of legal literature, delivering maximum services to readers, and taking a pragmatic approach to library problems and technical services.

Law librarians have had a long and distinguished role as teachers and guides to legal literature. Part of their mission is to provide current and comprehensive access to sources of constitutional case law and other federal legislation.

**Item 8**

Miles O. Price and Harry Bitner have written a text, Effective Legal Research, which has been widely used as a guide to legal research by law students. The exhibit displays a 1953 edition of the text.
Ease of access to the body of legal literature and advocacy for its scholarly dissemination have provided two important projects for AALL. This can be seen in its work on the Index to Legal Periodicals, and in its participation in the revision of the Copyright Act in the 1970s.

Item 9
Reclassifying constitutional headings by component parts is an example of AALL's effort to facilitate access to legal literature. In the 1955 revision of the Index to Legal Periodicals, the AALL improved coverage of constitutional law by providing a new taxonomy and additional subject headings.

Item 10
Examples of "Constitutional Law" subject headings before and after reclassification.

AALL's involvement in both service to legal research and advocacy on issues such as copyright is based on a clearly-defined mission to serve the nation's law libraries.

The controversy in the early 1970s surrounding the revision of the copyright law provided some of the liveliest debate among AALL members and other librarians.

Item 11
Copyright law is derived from the Constitution's grant of power to Congress to:

Promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. (Article 1, Section 8)

Item 12
The Williams & Wilkins Company caused much consternation among library associations and librarians when it filed a case before the Commissioner of the Court of Claims in 1968.

Item 13
While the Williams & Wilkins case proceeded through the Courts, photocopying of copyrighted legal materials became a matter of deep concern for law librarians. What had been a technological advance easing access to legal information soon became a source of apprehension.

Item 14
On March 31, 1972, AALL formed an ad hoc committee to study the relevant legal issues raised by the Williams & Wilkins case.

In 1972, the Association of Research Libraries (ARL) filed an amicus curiae brief in the Williams & Wilkins case. The AALL added its support to the brief, but this decision was not without controversy among AALL members.

In 1973, the Court of Claims found that photocopying portions of scientific journals as part of research or educational projects does not constitute copyright infringement, 467 F.2d 1345 (1973). The case was then appealed to the United States Supreme Court.

Item 15
Displayed here is a copy of the amicus curiae brief.

Item 16
While the appellate process proceeded, Congress established a National Commission on New Technological Uses of Copyrighted Works in 1974. Their
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Item 4 "Portrait of the President" by Rembrandt Peale (1805) held by the New York Historical Society and reproduced in The Founding Fathers: Thomas Jefferson, (New York: Newsweek, 1974).