



Spring 6-1-2007

A Legal Miscellanea: Volume 4, Number 1

Jacob Burns Law Library George Washington University Law School

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Recommended Citation

George Washington University Law School, Jacob Burns Law Library, "A Legal Miscellanea: Volume 4, Number 1" (2007). *A Legal Miscellanea: Archives (Print)*. 7.
https://scholarship.law.gwu.edu/legal_miscellanea/7

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A LEGAL MISCELLANEA

A NEWSLETTER FOR THE FRIENDS
OF THE JACOB BURNS LAW LIBRARY

VOLUME 4, NUMBER 1 SPRING 2007 :: THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

SPECIAL COLLECTIONS FOCUS: ALUMNUS GIFT ENABLES PURCHASE OF THREE EARLY COUTUMES

Statutum Delphinale si Quis (1523)

*Le Grant Coustumier du Pays
et Comté du Maine* (1535)

*Commentaire sur les coutumes
de Lorraine* (1634)

A recent generous gift from John T. McLoughlin, Class of 1976, and his wife Ann Marie McLoughlin, GW School of Business Class of 1976, has enabled the Law Library to add to its rapidly expanding collection of French customary law by purchasing three scarce *coutumes* printed in the sixteenth and seventeenth centuries. Mr. McLoughlin practices law in Paris with the firm McLoughlin & Avocats, and maintains a keen interest in French legal history.

The earliest of the works, Guy de la Pape's *Statutum Delphinale si Quis*, which treats the Dauphiné region of France, was printed at Grenoble and is the second edition of the author's *Commentaria*, first printed in 1496. Legal scholar and statesman Guy de la Pape has the

(continued on next page)



Eric Sirulnik demonstrates a vintage intercom system from the Clinic's early days.

Clare Duggan

LAW LIBRARY TO RECEIVE LEGAL CLINIC PAPERS

The Law School recently marked the thirty-fifth anniversary of its Community Legal Clinics, and in the wake of the celebration, veteran founder and longtime leader Professor Eric Sirulnik now is preparing to transfer the rich archive of the Clinics to the Law Library.

The archive tells the story of the Legal Clinics, spanning the years 1971-2003, through litigation files, memoranda, correspondence, grant proposals, and other documents, artifacts, and ephemera associated with the many matters Sirulnik and his students, and eventually a cohort of Clinic lawyers, tackled in the public interest.

"Some of the litigation material represents projects the Clinic undertook from time to time which were significant from a historical as well as a legal perspective. For example, we were instrumental in bringing suit to preserve the oldest African-American cemetery in Washington," explains Sirulnik, referring to the Mt. Zion Cemetery-Female Union Band Cemetery located in Georgetown and dating from the mid-nineteenth century. As developers hastened to turn the cemetery grounds into apartments and townhouses, litigation initiated by the Clinic resulted in U.S. District Court Judge Oliver Gasch's 1975 ruling in which he declared "the violation of [these] graves involves the destruc-

(continued on next page)



Title page and facing illustration: Statutum Delphinale (1523)

distinction of authoring the first book published in Grenoble, a volume of reports of decisions of the Parlement of Grenoble.

Alençon juriconsulte Guillaume le Rouillé authored *Le Grant Coustumier du Pays et Comté du Maine* (1535), printed at Paris. Le Rouillé also was noted for his commentary on the customary law of Normandy, of which the Library has a 1539 edition.

These two titles are extremely rare, with no appearance in the standard bibliography of French customary law.

Commentaires sur les coutumes de Lorraine, printed in 1634 in Espinal, is the earliest of our Lorraine *coutumes*, and is authored by Pierre Canon.

We extend our enthusiastic thanks to the McLoughlins for enabling us to augment the French Collection with this splendid group of *coutumes*.

tion of a monument to evolving free Black culture in the District of Columbia.” The decision was upheld on appeal, and the cemeteries were preserved and designated a Historic Landmark.

Sirulnik points out that “One of the things which struck me as I began to go through the earlier files was how much technology has changed in thirty-five years, and I don’t just mean the advent of computers. I came across not only carbon paper copies of correspondence, but old mimeographed flyers announcing the opening of our first office for legal services for the elderly. They were made from hand-cut stencils and the artwork was probably my own!”

The Clinics today are the direct descendants of Sirulnik’s first storefront office in Anacostia, established in the political climate characterized by the War on Poverty, the civil rights movement, feminism, consumer rights, and anti-war demonstrations. When Professors Sirulnik and Donald Rothschild (now Emeritus), founder of Consumer H-E-L-P, combined forces in the early 1970s, the result was a compact but dynamic organization whose vitality continues unabated in 2007 on a larger scale under the guidance of its highly-respected clinical law faculty.

The Law Library is very pleased to receive this outstanding complement to its growing research archive. The Clinic papers will be available to researchers when transfer and processing are complete.



Circa 1970s: Eric Sirulnik and student try out new computer, courtesy of Boise Cascade.



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THEN AND NOW: GW'S INTELLECTUAL PROPERTY LAW PROGRAM

Matt Braun, Reference/Intellectual Property Librarian

There is little question that the Law School, since its rebirth in 1865 after a period of wartime suspension, began by forging its identity to a significant degree on the strength of its teaching and scholarship in intellectual property law. Even a member of that first class, Marcellus Bailey, authored U.S. patent number 174,465, which, upon issue on March 7, 1876, protected the rights of a Mr. Alexander Graham Bell of Salem, Massachusetts for his “improvements in telegraphy.” And, hence, the telephone was born.

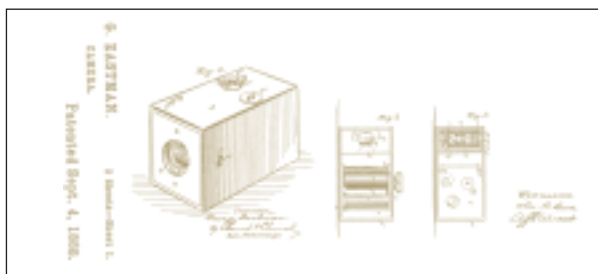
As the nineteenth century came to a close, and graduates of the Law School had authored patents for such inventions as George Eastman’s roll-film camera and Herbert Henry Dow’s process of extracting bromide, the Law School officially took its place at the forefront of intellectual property education with the establishment of the Master of Patent Law degree in 1895. Such a degree program afforded graduate law students the opportunity to take multiple courses in patent law and to take advantage of an alumni network which already had left an indelible mark on private practice nationally and on key institutions such as the U.S. Patent Office.

In the fall of 1949, Admiral O.S. Colclough, then Dean of the Law School, spearheaded another important initiative along the institution’s path to becoming the preeminent academic intellectual property center: the establishment of the Patent, Trademark and Copyright Foundation. The Foundation, based at the Law School, served as a strong voice on behalf of intellectual property attorneys across the country and as the first institute specifically dedicated to intellectual property law research. The Foundation’s importance was best articulated by famed New York patent attorney Theodore S. Kenyon, who in a 1960 address to a group of colleagues, stated: “For the first time in our history, a great university has established a foundation for the continuing study and evaluation of the operation of these systems of federal law. If properly organized and administered, that foundation should be of inestimable value to the public good” (43 *J. Pat. Off. Soc’y* 354-55 (1961)).

Although the Law School launched its intellectual property curriculum exclusively in the area of patent law, since the mid-twentieth century it has developed parallel strengths in copyright, trademark, commercial, and communications law, as well as in computer and Internet regulation and biotechnology. The increased diversity of the program was driven by the expanding definition of intellectual property in the marketplace and the vision of

Professor Irving Kayton, professor at the Law School from 1964 to 1988, who directed the Intellectual Property Law Program and worked to implement the modern LL.M. degree program in intellectual property for which the Law School has become world-renowned.

Today, after more than 140 years, the Law School continues its leadership in intellectual property law education by presenting unmatched opportunities for study in this area of law and to explore it in real-world settings. Each semester, both the LL.M. and J.D. degree programs offer



Roll Film camera, patent #388,850. Inventor: George Eastman. Patent Attorneys: Melville Church, Class of 1879 and Frederick Church, Class of 1886.

multiple core courses and specialized seminars, and students earn academic credit through working in key agencies such as the U.S. Copyright Office, the Federal Trade Commission, and the U.S. Patent and Trademark Office. GW’s program is headed by Professors Martin Adelman and Robert Brauneis, who also direct the Dean Dinwoodey Center for Intellectual Property Studies, which sponsors research, lectures, conferences and symposia bringing together leading academics and jurists. The Center is funded in part by the Bureau of National Affairs in memory of its founder, Dean Dinwoodey, L.L.B. ’29.

In the international arena, the Law School continues to advance rapidly as a global player in intellectual property. Two of its notable initiatives include the Munich Intellectual Property Law Center, a cooperative venture of the Law School and three leading European intellectual property institutions, and the Law School’s India Project, a partnership of various GW Law faculty, alumni, and lawyers and business leaders in India that will culminate in both the opening of the India Studies Center at the Law School and the first intellectual property law school in India.

At the turn of the twenty-first century, the Law School approaches its future in intellectual property law education with the enthusiasm and vision of its earliest days, when student Marcellus Bailey first apprenticed in the art and craft of patent law.

A LIFE OF CONTROVERSY: FRANÇOIS HOTMAN, HUGUENOT JURIST

Kasia Solon, Reference Librarian

“Bon jurisconsulte, mauvais chrestien.” Pierre de Brantôme (1540-1614)



An eyewitness account of the St. Bartholomew's Day Massacre, by François Dubois. From the Musée Cantonal des Beaux-Arts, Lausanne, Switzerland

As one French wag of the sixteenth century put it, “good jurisconsult, bad Christian.” For at least one contemporary legal figure, however, this bon mot had it all wrong. Rather, “good Christian, good jurist”— provided the Christian in question is a Huguenot (French Protestant) rather than a Catholic. The Christian who might have proposed such an inversion of Brantôme’s witticism was the influential and peripatetic French Huguenot jurist François Hotman (1524-1590). Whether in his role as law professor, legal scholar or diplomat, Hotman strove to distinguish himself as a legal and political theorist as well as a high-profile Protestant (rebellious, perhaps, against his prominent Catholic family) while controversy dogged his trail. Hotman’s adopted Protestantism led him to interpret the law from a Huguenot perspective: the king is a magistrate subject to removal by the people, and the people can realize their sovereignty through representative bodies. Presaging one of the tenets of the French Revolution, Hotman proposed the legitimacy of a reign which recognized the sovereignty of the people versus the sovereignty of an absolute monarch as described by political theorists

such as Jean Bodin. With approximately forty works of this prolific and controversial legal scholar, the Law Library’s Special Collections is a Hotman treasure trove, showcasing the depth and breadth of his career as a jurist.

Hotman first achieved distinction as a jurist by his commentaries on Roman law. Iconoclastic, he created a storm when he opined that Roman law had little bearing on French public laws and institutions. Hotman was an early advocate of the codification of laws in the vernacular, finding that the tangle of *coutumes* in force in the north of France might best be deciphered by a *de novo* attempt to organize the laws into a coherent subject structure. He prefigured by more than two hundred years France’s first successful unification of its laws into a national code by Napoleon’s *Code Civil* in 1804.

That any of Hotman’s works survived is a wonder. Aside from time’s depredations, the Wars of Religion which dominated France during the second half of the 16th century made the violent destruction of his papers a distinct possibility. As Hotman’s legal stature grew, so did he rise as a Huguenot zealot; however, escalating hostilities between Catholics and Protestants made his position risky. While serving as professor of law in Bourges in 1567, an angry Catholic mob pillaged his library. But the worst came in 1572 with the St. Bartholomew’s Day massacre. Though the origins of the massacre remain hazy, traditional theory holds that Catherine de’ Medici, mother of King Charles IX, planned the massacre, beginning with the assassination of Huguenot leader Admiral Coligny, whose influence she feared. Violence erupted, spreading from Paris throughout the country, including Bourges; thousands were killed in the bloody affair. To save himself, Hotman innocuously went out for a walk, still in his scholar’s robes, and then fled to a life of exile in Switzerland. Forced to leave his library and papers behind, he decamped with the uncertainty of ever recovering them.

Despite these miseries, or perhaps because of them, the following year saw the publication of two of Hotman’s most famous works, both of which are in Special Collections. These works nicely illustrate the scope of

Hotman's powers as a writer. On the one hand, Hotman was an innovative legal scholar with an epic reach, producing *Francogallia*, a sprawling multi-volume work on French legal history. Here Hotman deployed new humanist scholarly methods to assert French legal precedents for the people's role in legitimating a monarchy. Striking a secular tone, *Francogallia's* implied arguments against the French Catholic rulers gained all the more credence. On the other hand, Hotman proved to be the master of the biting polemic, authoring *De Furoribus Gallicis*, a pamphlet which provided an account of the St. Bartholomew's Day massacre and fueled a growing Coligny myth of a pious Huguenot martyr. Hotman's pamphlet was only one in a flurry of accounts, yet its broad distribution made it the most popular throughout Europe.

“With approximately forty works of this prolific and controversial legal scholar, the Law Library’s Special Collections is a Hotman treasure trove, showcasing the depth and breadth of his career as a jurist.”

Another work in Special Collections, *Brutum Fulmen* (1586), proved to be one of Hotman's last: a defense of the Huguenot Henry of Navarre's claim to the French throne. Opinion is divided on whether

Hotman compromised himself for the sake of the Huguenot cause. Yet this controversy did not prevent *Anti-Tribonien*, Hotman's 1567 treatise published after his death, from becoming the most frequently printed of his works. In it, he called for the study and codification of the native law of France, beyond Roman law alone.

Good jurist and good Christian? François Hotman aimed to be both. As Huguenot jurist he left as legacy the theory of resistance to tyrannical rule, holding fast to his adopted Protestantism in the face of Catholic persecution.

ELECTRONIC ACQUISITIONS UPDATE

Nicole Harris, Head of Electronic Services

The Law Library's most recent electronic acquisitions are targeted toward research in intellectual property and foreign law.

The Library has expanded its online database access to include current developments, commentary, law and analysis related to computer and internet law. Previously, its subscription included select intellectual property publications available through the *CCH Internet Research Network*. Its new arrangement includes the entire *CCH Computer and Internet Law Integrated Library*. This upgraded subscription includes access to the complete collection of intellectual property publications offered by CCH through its *Business Internet Research Network*. Through this service, researchers at the Law Library have online access to many more CCH newsletters, loose-leaf services and Aspen treatises in this area of law, including the *Journal of Internet Law*, *CCH Guide to Computer Law*, and *Scott on Multimedia Law*.

To support research in foreign law, the Law Library has acquired a subscription to two companion data-

bases from the Legal Information Center of the Peking University: *ChinaLawInfo* and *LawInfoChina*. *ChinaLawInfo*, a Chinese language database, includes more than 250,000 national and local laws and regulations plus secondary legal information including judicial explanations, legal studies research articles, book reviews, links to online Chinese legal journals, a directory of Chinese law scholars, and information about lawmaking and law enforcement. *LawInfoChina*, an English language database, provides access to approximately 5,000 laws, regulations, and cases. The collection includes selected regulations from the People's Republic of China, basic laws adopted by the National People's Congress from 1949 to the present, administrative regulations, rules, and orders, and local regulations and rules impacting foreign-related activities, technology investment incentives, and municipal economic development. This database includes the capability to display documents in English and Chinese side-by-side.



“ANTIQUARIAN LAW BOOKS ARE NOT INTERESTING JUST BECAUSE THEY ARE OLD”

A conversation with Michael von der Linn of The Lawbook Exchange, Ltd.

Blending erudition and a connoisseur’s eye with a keen understanding of the antiquarian book trade, Michael von der Linn is one of the bookselling profession’s most accomplished members. As Manager of the Antiquarian Book Department at The Lawbook Exchange, Ltd., which specializes in all aspects of law and legal history, Michael’s many responsibilities include describing books for sale, composing the catalogues in which they appear, finding books for resale, and choosing titles for reprinting. Michael graciously agreed to share with us his thoughts on the art and business of handling rare law books.



Michael von der Linn works with a book at the Lawbook Exchange.

A Legal Miscellanea: Tell us how you approach the process of describing a rare book.

Michael von der Linn: It is necessary to strike a balance between scholarship and salesmanship when describing an item’s physical condition. Above all, I must be sure that it is authentic and complete, and to account for any modifications it may have acquired over time. I also need to describe its condition accurately. Since I need someone to buy it, I am compelled to choose my words carefully. As a rule, I am critical when I describe an item so a buyer will be pleasantly surprised when it is better-looking book than expected.

Why are rare law books important?

Antiquarian law books are not interesting just because they are old. They are interesting because they enable us to trace the law’s development and preserve information that might be forgotten otherwise. They can also inform later developments. Let me give you an example. For years, materials relating to the status of civilians under military law from the time of the American Civil War had purely historical interest. But it is timely today in debates about civil liberties and enemy combatants in the Global War on Terror. Ultimately, old books are important because they contain information that may be important in the future. Collecting them preserves a body of knowledge that is more vulnerable than most people assume, despite the existence of reprint programs and electronic media.

Why is reprinting classic legal texts important?


It is remarkable how many important books have never been reprinted and are scarce today. As sellers of old and rare books we are keenly aware of this situation. In many cases our reprints have original introductions or additional information, such as a reprint of a related text. To return to the previous question, we hope our reprints will preserve legal history, enhance scholarship, and enrich debate.

How do you determine what to reprint?

We look for historic and unjustly forgotten titles that are difficult to find. Our interests, awareness of current affairs, and knowledge of the field guides us in most cases, but many projects are initiated by suggestions. We actively solicit reprint requests at conferences and through our website. Several projects have resulted from suggestions.

What are some examples of exceptional works you have handled?

Some items I have enjoyed working with are first editions of Bracton, Cowell’s *Interpreter*, and Story’s *Commentaries on the Constitution*. I have especially fond memories of the following:

 an extensive archive of legal papers of George Washington Strong, one of the most prominent lawyers in early nineteenth-century New York and a founder of the firm that evolved into Cadwalader, Wickersham, and Taft. Organizing this archive was a quite a challenge;

✿ A printing of the *Liber Sextus Decretalium* (a book of the *Corpus Juris Canonici*) from 1485. This was the first incunable I handled. The experience felt like a rite of passage;

✿ A copy of Darrow's *Farmington* inscribed to Anita Loos (Emerson), the author of *Gentlemen Prefer Blondes* (1925). I loved its inscription: "To Anita Loos Emerson/with the best wishes of her/friend/Clarence Darrow/Detroit/May 1st-1926/It may be that gentlemen prefer/blondes but I Don't-/C.S.D."

How do you find books to sell?

Our inventory comes from a variety of sources. The most important are local and international auctions, offers from individuals, and offers from book dealers. We also work with book scouts. They do a wonderful job of finding titles in dusty provincial bookshops, antique shops, and other places that are not involved with the internet or the mainstream book world. We even find items occasionally on eBay.

What methods do you use for appraising books?

Online bookselling sites like the Advanced Book Exchange (ABE) and greater public participation in auctions has created an unprecedented degree of transparency in the antiquarian book market. In the past a book's price was determined by the bookseller's sense of the market, scarcity, and intrinsic value. (The main sources of information were book fairs, auctions, and data collected in such publications as the National Union Catalogue (NUC), *The AB Bookman's Weekly*, and *American Book Prices Current*.)

As one would expect, this situation changed dramatically with the advent of the internet databases and online bookselling. A visit to OCLC or KVK will give you a rough idea of a title's scarcity. Checking a title on a site like ABE or AddAll will show you, in a matter of seconds, how many copies are on the market and what other dealers think it is worth. The nature of these sites compels me to price my books competitively. Indeed, I check the price of my items against the internet before I issue a catalogue. Many are rare or unique, however, and I may have an item with unique characteristics, such as an interesting association or an especially attractive binding. In cases

such as these, my knowledge and experience will determine the price. My ideal is to find something that does not appear on the internet.

How did you learn to do what you do?

Like many, if not most, antiquarian booksellers, I learned a great deal on the job. My only specific training was a seminar on the bibliography of early Anglo-American law taught at the University of Virginia Rare Book School. However, my education, scholarly interests, and prior work experience provided a solid foundation for what I do today. My background is in intellectual history and musicology, which I studied at Bard College and Columbia University, where I earned a Ph.D. I was also active as a college teacher and scholar for a few years. My training and research were grounded deeply in the history of ideas. Musicology taught me how to interpret cultural artifacts. And my work with early printed music and music books helped me to appreciate the significance of texts as physical objects. Seminars in the medieval and Renaissance music also acquainted me with the characteristics of European manuscripts and early printed books (as well as the confusing subject of Latin abbreviations). More generally, my training as a graduate student involved classes in descriptive bibliography, languages, research, writing, and critical analysis. All of these play a role in my work today.

Any parting words on the subject of bookselling?

Since it is much easier to find books today the booksellers must realize that they are providing a service. In the past booksellers dominated the market and controlled access to books. Today consumers use channels that were mostly limited to the trade. Consumers also have new avenues like eBay and online bookselling. In the wake of these changes booksellers contribute to the market by expediting the process of finding, evaluating, and describing items. Their expertise and connoisseurship also prevent costly and time-consuming mistakes. Though commercially motivated, their work plays a crucial role in the transmission of knowledge.

The Lawbook Exchange, Ltd. may be found on the web at www.lawbookexchange.com/

FOR INFORMATION

on the topics covered in this newsletter, Special Collections, or the Friends, please contact the editor, Jennie C. Meade, Rare Books Librarian, at jmeade@law.gwu.edu or (202) 994-6857.



HUGH Y. BERNARD, JR: ALUMNUS, BENEFACTOR, PROFESSOR EMERITUS, AND FORMER DIRECTOR OF THE LAW LIBRARY

Professor Emeritus and former Director of the Law Library Hugh Y. Bernard, Jr., 87, died February 28 of heart and pulmonary ailments at Montgomery General Hospital. He had lived in Silver Spring at Leisure World. Professor Bernard had a long association with GW which began with his commencement of the study of law in 1957 and continued until his death.

Professor Bernard received his B.A. in 1941 from the University of Georgia, where he was a Phi Beta Kappa scholar, and served in the Army Air Forces during World War II. He earned his Master's degree in Library Science from Columbia University in 1947, then joined the Library of Congress where he became a senior cataloguer in the manuscript section of the Descriptive Cataloguing Division before entering law school at GW in 1957.

Even before graduating from law school, Professor Bernard was asked to oversee library operations in 1960. When he received his degree, he was named Law Librarian and served in that capacity for twenty years, retiring in 1981.

Professor Bernard witnessed a period of exponential growth in both the library and the profession during his tenure. When he assumed his GW library duties, the staff consisted of three people: himself, a cataloguer and a clerk-typist. Eventually the staff grew to twenty-one, including eight professional librarians. Professor Bernard served under three deans — Nutting, Kramer, and Barron — and played a role in planning the component of the Burns building that opened in 1967. He served as President of the Law Librarians' Society of the District of Columbia from 1966–1967 and was a member of many other legal and library associations. He was a member of the Order of the Coif, a legal honor society.

Professor Bernard was a member of the Grand Lodge of Freemasons of Washington, DC, where he held many leadership positions. He was also a member of the Veterans of Foreign Wars and served in the Navy Reserve from 1964–1969.

The Hugh Bernard papers, housed at the Gelman Library, reflect Professor Bernard's attachment to GW. He assembled materials and produced a body of research which document the history of the Law School, spanning the years 1865-1984 (See *A Legal Miscellanea*, "Backstory," Spring, 2006).

Professor Bernard was a generous benefactor and a kind and loyal friend to GW Law.

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