QUO VADIMUS?

EDWARD S. BADE*

The title is borrowed from a delightful essay of Stephen A. Leacock in which he deprecated the fact that a good many churches had repealed or greatly modified hell and the devil, and suggested that mankind really needed a hell of burning brimstone and a devil with his three-tined oyster fork to prod mankind on to better things. With that, I take my oyster fork in hand.

The Association of American Law Schools has shown a mild—very mild—interest in the quality of its libraries and library administration. In the beginning, in 1900, it required the member schools to own *or have access to* a library containing the reports of the state in which it was located and of the United States Supreme Court. In 1912, the Executive Committee recommended an amendment of the articles requiring schools to "own a law library of not less than 5,000 volumes." Nothing was said as to quality. Not until 1924 did the Association add the requirement that the 5,000 volumes should be "well selected and properly housed and administered for the use of the students". In 1925 the schools were required to have a library of 7,500 volumes as of September 1, 1927, and they were required to make an expenditure of not less than $1,000 per year and $7,500 over a five-year period for acquisitions. In 1927 a further resolution concerning qualitative content was adopted. In 1930 the articles were amended to require a library of 10,000 volumes as of September 1, 1932, and the minimum expenditure for acquisitions was raised to $1,500 per year and $10,000 for any five-year period. From this time forth, the collection was to be made readily available for use not only by the students, but also by the faculty.

A great step forward was made in 1937. For the first time member schools were required, beginning September 1, 1940, to have a librarian —nay he was even required to be "a qualified librarian whose principal activities are devoted to the development and maintenance of an effective library service." Almost forty years after the Association came into being, twenty-three schools voted against having even a part-time librarian. Some of the negative votes on this amendment are enigmatic, coming from schools that for years had had qualified librarians, such as Chicago, Columbia, Illinois, and Michigan. It is significant that an immediate need was felt for a definition of the term "qualified librarian." [1]

* Professor of Law, University of Minnesota Law School.

[1] HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 41 (1937); *id.* at 282–283 (1938).

About this time the Executive Committee of the Association asked the Joint Committee on Cooperation between the Association of American Law Schools and the American Association of Law Libraries to frame interpretations of the Association's articles relating to libraries.[2] The library committee did this and reported to the Executive Committee.[3] The Executive Committee approved these interpretations "in principle" [4] but thought they should not be adopted as requirements without full discussion at a general meeting of the Association.[5] At the 1945 meeting, the library committee itself made no recommendation looking toward the adoption of the interpretations as requirements, properly feeling that proposing their adoption as requirements was a function of the Executive Committee.[6] The Executive Committee proposed no action and there the matter rested until December 1946.

At the 1946 annual meeting the Association considered a proposed revision of the Articles of Association. The proposed revision of Article 6, Section 6, called for a full time librarian and increased the required expenditure for library purposes.[7] The meeting resolved itself into a committee of the whole which recommended approval of the requirement for a full time librarian and a minimum expenditure of $15,000 for library purposes during any five year period, of which at least $2,000 must be expended each year.[8] This proposed amendment was not then adopted by the Association. A committee was authorized to present a new draft of amended articles of association.[9] The discussion indicated that this committee might build on the work previously done, and incorporate matters on which agreement had been reached in the committee of the whole. The new committee during the year submitted a draft of its proposed revision of the articles, requirements and standards of the Association to the member schools for criticism and suggestions. In this draft it made some excellent proposals with reference to the library and librarian. These proposed increased requirements and standards apparently raised so much criticism and opposition that they were withdrawn by the committee. The committee felt that its function was to record "seemingly dominant public sentiment" and "to record a body

2 Roalfe, *Formulation of the Interpretations to the Library Requirements of the Association of American Law Schools*, 40 L.LIB.J. 229 (1947).

3 The proposed interpretations are published in the 1943 Handbook, pp. 275–279, and in the Committee Report, *id.* at 206–217.

4 The phrase "approve in principle" has disconcerting connotations reminiscent of the days when Adolf Hitler and Benito Mussolini "approved in principle" when they intended their practices to be something quite different.

5 HANDBOOK 25 (1943).

6 HANDBOOK 199–201 (1945).

7 HANDBOOK 162 (1946).

8 *Id.* at 171.

9 *Id.* at 65.

of basic agreement." As a result, the committee proposed as an objective, "a library adequate for the curriculum and for research." It required a library "of at least 10,000 volumes and an adequate library administration." This much is in the proposed articles. The proposed standards for the most part are a copy of the former requirements except that they now called for "a qualified *full-time* librarian, whose principal activities are devoted to the development and maintenance of an effective library service." They also increased the annual minimum expenditure for library acquisitions from $2000 to $3000. As the committee said, this simply continued the purchasing power of the former requirement.[10] All of these standards and requirements were adopted to "become effective not before the academic year 1948–49." [11] Thus far had the Association come in almost half a century in the matter of library standards *on paper*. What has existed in fact is something else again.[12]

It is submitted that the record is not one to be proud of. It begins with incredibly low library standards, and the gap between what at any time has been and ought to have been has never been closed or narrowed. It reminds one of the comment once made concerning an incompetent lawyer, that he fell a year behind in his first year in law school, and never managed to make it up.

Since September 1, 1940, the Association has required member schools to have a qualified librarian whose principal activities are devoted to the development and maintenance of an effective library service. Beginning with the 1939-40 Teachers' Directory, the librarians were to be listed together with biographical data indicating their qualifications. No doubt this was intended as a policing measure. One may therefore assume that every school put its best foot forward in stating the qualifications of its librarians. Let us see what is revealed in the 1947–48 and 1948–49 Directories, seven and eight years after the requirement was established.

The 1947–48 Teachers' Directory lists the faculties of one hundred and one member schools. In the list of faculties by schools, seven indicate no one with a librarian title. The biographical information given in the directory indicates that fifty-six of the listed librarians had legal or legal and library training; seventeen had library training only; twelve had degrees in arts or science, whether in library training or not we are not told. Four had no degrees indicated, but seem to have had long library experience. As to eighteen others, we are left wholly in the dark as to the nature of their training, if any. The 1948–49 Directory shows some improvement. Out of one hundred and three member schools list-

10 HANDBOOK 158 *et seq.* (1947).
11 *Id.* at 58.
12 See Horack, *The Small Law Library and the Librarian*, 30 L.LIB.J. 6 (1937).

ed, only four indicate no one as in charge of the library; sixty-three of the librarians listed had either legal or legal and library training; nineteen had library training only; nine had indeterminative degrees in arts or science; fifteen indicated no sort of training or degree; and we still have the four without degree, but long library experience.[13] Thus it appears that the law-trained person has been favored in the selection of librarians. The figure probably has to be discounted somewhat. One may suspect that in a number of schools, a member of the teaching faculty has been given the title of librarian but little or no time to do library work. For instance, the 1948–49 Directory indicates thirty-two "librarians" teaching law courses other than legal bibliography. Four of these are listed as teaching four courses each, and one was listed as teaching seven. What a man!

Of the rest, eighteen teach legal bibliography only, which under particular circumstances would seem proper. But one wonders how many of the fifteen listed without any indication of degree, training, or experience are dean's secretaries with a librarian title, or perhaps even the janitor who cleans up the reading room and puts the books back in the shelves. Although no one is *listed* as librarian-janitor, many are listed as librarian and assistant dean, librarian and registrar, etc. Are the principal activities of these persons devoted to the development and maintenance of an effective library service?[14]

Obviously there are schools which seek to satisfy the librarian requirement by passing the title of librarian down the line to the youngest instructor on the faculty, to the least competent member of the faculty, to the dean's secretary, or to any other convenient person associated with the law school. Some schools probably select a person to be the law librarian more or less permanently and select a law trained person with the idea that he shall also teach law courses. Under the standards, even as now written, that seems to be permissible so long as the teaching load is anything less than a half time load. Even where a person has been selected to be a full time librarian, the fundamental trouble has been the basic and abysmal ignorance of deans and faculties as to the need for a good library, what constitutes a qualified librarian, and what constitutes an adequate library administration. One is left with a feeling that our deans and faculties have considered the requirement for a library as purely technical, and that anyone who knows the alphabet and can count at least to three hundred is qualified to be a law librarian. Anything will do provided it is cheap. One suspects that a typical faculty meeting on

[13] The total of these figures cannot be evenly apportioned among the member schools, because in each directory a number of schools list two or more persons as engaged in library service.

[14] For an insight into what is going on, see Roalfe, *supra* note 2, at 238 *et seq.*

selection of a librarian proceeds to a canvass of recent graduates of the school who have been out long enough to find out that getting established in practice is a tough row to hoe and who have succeeded at it so poorly that even a low salary will be an inducement to change. Thus the upper percentage of graduates is automatically eliminated. In fact, all but the lower ten to fifteen per cent is eliminated. The choice finally narrows down to a graduate who got through law school with little to spare. His acquaintance with legal literature is limited to the case books and hornbooks he used in school, and the few additional texts and periodicals into which some professor pushed his nose by force. He may be a student who, in his senior year, saw a reference in his case book to "Cent. Dig." and asked one of his better classmates what it meant. When he turns out to be as bad as anyone who had the sense he was born with would expect, another dodge is sometimes tried. A faculty library committee is appointed to assist and supervise the librarian. Thus the sow's ear is transfigured into a silk purse. Unless the faculty committee is going to do the work of the librarian, plan the building of collections, make want lists, check catalogues and bibliographies, etc., this will not help one whit. If the librarian is competent, such committees are clogs. If a committee must be convened and convinced before a book can be bought, the order will invariably be placed after the desired item has been sold to a librarian who is not thus hog-tied. If the librarian is incompetent, the committee will never learn that material has been offered except on its own initiative and then also probably too late. Inquiry of book sellers who visit law libraries indicates that there is not one thus serviced that can be said to be a good, well-planned library. If this committee dodge is so effective in getting first-rate service from inferior men, why is its use not extended? Why not appoint a low-grade law-graduate professor of jurisprudence and then appoint a committee to supervise and assist him? It should work equally well. It should be said here that every competent librarian welcomes the interest and suggestions of faculty members in the building of the library. That is something quite different.[15]

One wonders whether law publishers are putting out sets in series of not exceeding three hundred volumes out of deference to the number of librarians who cannot count beyond that number, in the same way they publish descriptive word indices for the benefit of lawyers who cannot translate a fact situation into terms of legal concepts. It is submitted that if half the time and thought that has been directed to finding librarians cheap had been directed toward getting competent ones, we would

[15] The value of such help is reflected in the growth of the Harvard Law Library. See THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL, 1817–1917, 86–121 (1918).

have more qualified law librarians, better law libraries, and better law schools.

What *should* the Association require? The Articles now state that the association "shall encourage its members to maintain . . . a library adequate for the curriculum and for research." [16] This is stated as an objective, not a requirement. Should this not be required? Member schools are now required to "maintain a working library of at least 10,000 volumes and an adequate library administration." [17] The meaning of the requirements is amplified in the Standards.[18] For reasons previously stated, the committee on Revision of the Articles of Association made practically no changes here from what had previously been required. The committee made it clear that it was not satisfied with the requirements and standards,[19] and recommended to the Executive Committee that it consider an upward revision. That committee probably accepts the recommendation "in principle." The objective of "a library adequate for the curriculum and for research" should first of all be a requirement. What is adequate for these purposes needs further and higher-graded definition than it has been given in the standards. With reference to the quantitative content a library of 10,000 volumes today can hardly be considered adequate. Many law offices have larger ones. A library of at least twice that number ought to be the minimum now. As a matter of fact, if the library contains the materials specified in the standards, the 10,000 volume minimum is just about filled. Furthermore, what about schools with large enrollments? Is one set of the United States Reports adequate for a school with an enrollment of say 500 students? What of schools with an enrollment of 1,000 or more? How many sets of the National Reporter System, of the United States Code and Statutes at Large, or of the appellate reports of the state in which the school is located should be required? The specification of content in Standard III certainly ought to be limited to schools with a very small enrollment. What should be required for larger schools, I am not prepared to say, but certainly as the students increase in number, so should some of the library materials. As a blanket requirement the 10,000 volume minimum might have been defensible about twenty years ago. If any minimum number of volumes is to be specified it ought to be revised upward annually. Since the 10,000 volume minimum was first established as of September 1, 1932, the National Reporter System has increased by almost 1500 volumes, the ten periodicals have issued at least one volume annually, the

[16] Art. 6–1–5, PROGRAM AND REPORTS OF COMMITTEES, ASSOCIATION OF AMERICAN LAW SCHOOLS 135 (1947).
[17] Art. 6–2–4, *id.* at 134.
[18] Art. III, *id.* at 138.
[19] HANDBOOK 172 n. (1947).

United States Statutes at Large usually appear in three volumes annually. The United States Supreme Court, state appellate courts, and the English courts have continued issuance of published opinions. Unlike the Association of American Law Schools in this matter, the legal world has been moving forward. Isn't it time the Association woke up to the fact that we do not live in a static world? According to the standards a school should spend at least $3000 annually for acquisitions. In the light of present day costs, this figure is utterly inadequate to maintain any worthwhile collection up-to-date. The annual minimum expenditure should be one that requires the school to *improve* its position. It should not be less than $5000. In connection with these matters it is interesting to note that over a hundred years ago the Harvard Law Library contained 12,000 volumes and then spent $2500 annually for acquisitions.[20] The requirements for librarians should be raised. First of all a requirement for a librarian should be included in Article 6 of the Articles of Association and in Article II of the Standards where the requirements and standards for the faculty are stated. This may seem a small matter, but it is not. If the librarian is definitely a member of the faculty, the dean and faculty are more likely to give some thought to the fitness of the person appointed to that position. So long as he is to be a Lazarus who can be kept under the table, they will not.

The Articles now require an "adequate library administration." They say nothing about a librarian. The standards call for "a qualified full-time librarian, whose principal activities" are to be the library. Except for the word "full-time" this was a requirement under the old articles since 1940. In a technical sense, in so far as requirements of the old articles have now been made standards, the Association has taken a step backward, since under the Revision of 1947, requirements are policing minimums whereas the standards are statements of desirable objectives.[21] Definitely the librarian should be a qualified full-time librarian. Unfortunately the standard is somewhat self contradictory in calling for a full-time librarian whose principal activities are devoted to the library. "Principal activity" can be a weasel phrase, satisfied by anything that can be called more than half-time. Certainly the latest Association Directory indicates many part-time librarians.

The librarian should be required to devote his full time (subject to exceptions hereinafter mentioned) to the development and administration of the library. Since publishers and booksellers operate twelve months of the year, the librarian necessarily also should be on duty throughout the year. If the librarian is required to devote all his time to the library,

20 THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 94 (1918).
21 HANDBOOK 25 *et seq.* (1947).

the school is more likely to see to it that he has a library of sufficient size and quality to merit his full-time attention. If the library is small, it is all the more desirable that he give his full time and attention to improving and enlarging it. If it is large, it will require all his time. In fact, since nearly all library work is time-consuming work, he will need help.

Should librarians be allowed to be part-time law teachers? Except for a course in legal bibliography and perhaps a course in law librarianship, he should not be allowed to teach at all. Teaching and library administration are each jobs that are never done if well done. Combining the two assumes that the impossible can be done. No man can serve two masters equally well. In this case the library is certain to suffer. In the law school hierarchy the professor outranks the librarian and is generally better paid. The librarian-instructor will therefore concentrate on the teaching so that he may become a full-time instructor and the library work gets at best a lick and a promise. A course in legal bibliography, if limited in time, may well be given by the librarian. It is directly related to library work and compels the librarian to learn something about the use and content of his library. Since competent law librarians are an exceedingly scarce article, it is also desirable that we permit at least the competent ones to teach law librarianship in library schools. In fact, the Association should sponsor a school for the training of law librarians. If such a school were operated in the summer, under the auspices of a good, established library school, our law schools might well consider giving their librarians leave of absence with pay to attend such a library school from time to time. Even the teaching of legal bibliography and law librarianship should be forbidden unless the librarian has one or more full-time library-trained assistants.

What qualifications should be required for law librarians? The Proposed Interpretations [22] state that he shall have aptitude for law library work, and that he should have at least either six quarters of legal training or one year of library training, or half and half of these two; or two years of experience as a full-time employee in a law library. Whether library training or legal training should be required is a point open to debate. A case can be made either way. The point can be made that a law graduate—especially one from the lower register of the class—is likely to have his ego inflated by the LL.B. degree to the extent that he will consider it beneath him to set about learning anything about library administration. On the other hand, it can also be argued that the graduate in library work may consider his library training adequate for all purposes and make no effort to learn what he needs to know about legal literature and the law. The fact is both kinds of training are desirable.

22 HANDBOOK 207 (1943).

If a choice must be made, I am inclined to the view that it is more important that the law librarian know law and legal literature than that he know all about cataloguing and classification. This is where the "Lincoln Argument" comes in. Someone is sure to point out that the late great John H. Arnold had neither formal law nor library training. The answer, of course, is that he was exceptional. If the library is too small to warrant library-trained assistants for the librarian, then technical library service will not be greatly missed. If it is large enough to require assistance, then library-trained assistants should be engaged. If library training only is required, there is some danger of running foul of a doctrine promoted by some of our colleges of education which seem to hold to the idea that it is more important that a teacher have a course in how to teach a language, a science, or subject, than that he know the language, science, or subject he might teach. So the library-trained librarian may regard the processing of material the one important function of a librarian. He may consider processing one book as no different from processing any other, whereas selective acquisition is the most important function of the librarian. The objection to the law-trained librarian would probably be met by making the selection from the upper 10 per cent of the candidate's class. The ego inflated by an LL.B. degree is found almost exclusively in the lower percentile.

What we should look for in a qualified librarian may be determined from a consideration of what he should do for the school. First of all, a successful law librarian must be at least a minor prophet. The law is not static, nor should the teaching of law be static. The librarian should acquire for the library *now* the materials the students and faculty will be asking for 10, 50, even 100 or more years from now. The librarian therefore must anticipate the development of the law and the future needs of the school. By way of illustration, how many law libraries were well stocked with the source material in the field of administrative law when that subject found its way into the curriculum? Most of that source material could be had for the asking when it was issued. Those who are now belatedly trying to acquire this material have no doubt found that most of it found its way into waste baskets and that much of it cannot now be had at any price. What can be found must be paid for at high prices. The question asks itself, are cheap librarians really cheap?

In order to anticipate the trend and development of the law and the teaching thereof, the librarian should first of all be the most widely read member of any law faculty. He must be thoroughly grounded in legal history and the history of legal literature. He must be well informed on current developments. He who is shooting at a mark in the future needs both rear and front sight to hit the mark. To qualify himself for his

task and keep himself qualified he must obviously have been and be a competent and assiduous scholar. He must have time to keep himself qualified. What the librarian does or fails to do affects the quality of the library not only at the time of action or inaction, but forever after. The administration of a poor dean can be lived down. The effect of an incompetent instructor on the staff is merely temporary. He is only one of a number and can be assigned to the teaching of relatively unimportant subjects. Not so of the librarian and his work.

Unless a school is so fortunate as to have unlimited funds for its library, his buying must be selective. To do that he must first of all know what sort of library he is trying to build. To do that he must know the aims and objectives of legal education in general and in particular the aims and objectives of his school. He must know the difference between first rate and inferior material; between source material and secondary authority. He must know sources of supply and prices. Obviously, he must be a full-time, all year librarian. Publishers and dealers work at their business all year, and so must the librarian. Competition for scarce material and bargains is keen. It comes not merely from the better libraries in Association schools but also from the Library of Congress, state libraries, bar association libraries, and the great foreign libraries. The part-time librarian has about the same chance of winning in this race that a hobbled horse has of winning the derby.

It is my contention that next to the dean, the law librarian is the most important member of any law faculty. The only reason the dean is more important is that he usually selects the librarian. The fact is that no law school will long be better than its law library. No law library will long be better than its librarian. Should he then not be selected with at least the same care that is exercised in selecting an instructor? Should the search not be for a competent scholar? Should his compensation not be at least equal to that of the teaching staff? Should he not give his full time to the library? Should he not be assisted by a staff sufficiently large to allow him time to read widely—not simply booksellers' catalogues, but the Association's Handbooks and Bulletins, especially the parts dealing with curriculum and the aims and objectives of the Association, book reviews, legal periodicals, legal history, and the history of legal literature and current history? Anyone who thinks, knows that the correct answer to these questions is "yes." Anyone who has been observant also knows that the practice in most schools has been and is to the contrary.

In the case of the instructional staff, the better schools arrange and limit the teaching load so that the instructor can keep abreast of his subjects, do research, and generally improve himself. The like should be done in the case of the librarian. He should be provided with an

office, bibliographical tools, and a sufficient staff so that he can really do his job, do research, and improve himself and his library. In only a few schools is this done. Generally, as soon as it is discovered that he has any time for anything except unpacking books, shelving them, checking booksellers' catalogues and the like, something is done about it. He will be asked to read proof, check citations, assist the janitor, and walk Professor Jones' dog.

Our law schools would be well advised to reconsider their practices. It takes a good librarian to build a good library, a good library pays off in cash dividends. The school with a good library can and does attract and keep a good faculty. Legal scholars will go to and stay at a school with a good library for less monetary compensation than will induce them to go to or stay at a school with an inferior library. Good students are attracted to the school with a good library. A school with a good library and a poor faculty can always rehabilitate itself without undue expense. The contrary is not true. Good libraries are not built by fits and starts, but by a long-time, continuous process. If Harvard Law School were now to set out to build its present library it would have to multiply its present investment by at least ten and even then it could not duplicate it because much of the material the late John H. Arnold acquired for pence and shillings cannot now be had for any number of pounds. Harvard was fortunate in having two deans who fully appreciated the importance of the law library to the law school and the necessity of a competent librarian in building a good library. They built the golden age of the Harvard Law School by building its library.

The history of the growth of the Harvard Law Library [23] should be made required reading for our deans. It shows what can happen when the dean and faculty interest themselves in the library; the effect of complacency; the ineffectiveness of part-time librarians; what happens when students are put in charge of the library; and finally what a competent full-time librarian can accomplish with the active support of the dean and faculty. I repeat, the greatest single obstacle in the way of improving our libraries and standards for librarians, is the ignorance of our faculties and deans concerning the necessity of a good library in legal education and what is involved in building and maintaining a good library. They seem quite incapable of understanding that good libraries don't just happen, that almost all library work is painstaking and exceedingly time-consuming work. How else can one explain the prevalence of the notion that the position of librarian can be filled by anyone and that the job can be a part-time occupation, and the lack of adequate

[23] As told in THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 86–121 (1918).

library staffs, work space, and equipment. The librarian and his staff spend most of their time acquiring, classifying, cataloguing, and arranging materials so that the faculty will not have to spend its time in searching out what it wants. Anyone who has ever made an index for a book should have some inkling of what a painstaking, tedious, and time-consuming job the librarian and his staff has. Perhaps the solution is to require several years of successful service as librarian or assistant librarian as a prerequisite to deanship.[24] Of course that will never be done. But if it were, sound legal education would be the gainer.

For years we have had committees on the aims and objectives of the Association and of legal education. The futility of talking about such aims and objectives without consideration of the means of attaining them has been mentioned several times.[25] The library is a good place to begin —in fact, a *sine qua non*. How can a modern curriculum be implemented without a good library? How can any worth while aims and objectives of the Association be attained without it? Sir Richard Livingstone, Vice-Chancellor of Oxford University, has said that in education we accept excellence as our master, and that the first rate is the accepted goal of humanity. The Association of American Law Schools apparently has accepted "in principle," but its action and inaction bespeak lesser aims.

[24] Dean Langdell served a term as librarian while a student.

[25] See the remarks of Professor Patterson in HANDBOOK 156 (1944), and of Dean Brosman in HANDBOOK 125 (1947).