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On the Outside Looking In:
The Legal Historian’s Perspective
on Rare Book Collections

Jenni Parrish

My talk today is shaped in small part by the fact that I am a law librarian, but mostly it is the result of my recent experience as a beginning scholar trying to do legal historical research in several archival and special collections. During the past year I taught a seminar at the University of Pittsburgh Law School on Nineteenth Century American Legal History. One of the major emphases of the course was the law of slavery in the nineteenth century. In the course we studied a number of state and federal court cases dealing with different aspects of slavery from that time. One case intrigued me enough to do additional on-site research in hope of writing a law review article on it. It was a fugitive slave case from the mid-nineteenth century which started at the state court level and eventually went to the Supreme Court of the United States. I decided to do research in the state in which this case originated.

After preliminary research in my own law library, I traveled to the other state and spent time in two archival collections, one university library, and the library and archives of the state historical society. I did not identify myself as a librarian but simply as a law professor because I wanted no special treatment. It was definitely a consciousness-raising experience and caused me to focus on two points which I want to share with you. The first point is the creation and administration of rules and policies for special collections. The second point is a consideration of the qualities necessary in the type of person who is placed in charge of special collections.

My purpose here is to raise questions, but not necessarily answer them. The answers will undoubtedly vary from library to library.

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To set the stage, two anecdotes are in order. The first is about an incident which occurred in my own library several months ago. A young man who studies in our library often, but who is neither a faculty member nor a student, approached me about doing a comparison and contrast of some early Pennsylvania laws. The difficulty lay in the fact that one of the relevant volumes was in our rare book collection but the other was in a special collection in the university library. He needed to have them both in the same location at the same time to do a word-by-word analysis. I agreed to talk to the librarian in charge of the special collection about bringing the university library’s volume to our library, but as things turned out, there were two problems: (1) the researcher would have to use the volumes in a secured place with a staff member watching; and (2) the researcher could not do any photocopying himself, but could pay the university library staff to do it for him. Because I could not guarantee either a secured reading room with a staff member/watchdog or the prevention of photocopying by the researcher, I had to direct him to see the special collections librarian about other arrangements. I was also not very patient or sympathetic when the researcher wanted to discuss with me the hypothesis he hoped to prove in comparing the two sets of laws. My lack of helpfulness in this situation has become very troublesome to me in light of the treatment I later received as a legal historical researcher.

Researching the fugitive slave case mentioned above constitutes my first foray into substantive legal scholarship, and the research is not over yet. The second anecdote I wish to tell involves contrasting the abysmal treatment I received at the state historical society with the extraordinarily kind treatment I received in the archival collection in another city. The librarian at the historical society was unhelpful, snappish, and clearly bothered by the fact that I had disturbed the peace in her collection that morning. I later discovered that she had been terrorizing staff as well as patrons for over twenty-five years.

At the other end of the spectrum was the archivist in another collection who spent over two hours debating with me about the viewpoints I had developed on the case. He was very knowledgeable about the state history during the nineteenth century and suggested a number of historical and political/historical titles for me to check. He was sincerely interested in what I was trying to accomplish.

The treatment I received during my stay in that state was far more positive than negative. But becoming a patron, and being treated
like one, caused me to think about policies and procedures for special collections and why they are not always clearly spelled out and enforced.

Why do we have rare book or special collections? How do they come into being? In many law libraries it is an evolutionary process. Someone donates some rare books or the money to purchase them. Perhaps a faculty member needs certain rare materials to support his research and acquisition funds are earmarked for that purpose. A rare law book collection can "happen" overnight.

Acquiring, arranging, and securing rare law books is the obvious part. Figuring out where, and how, and by whom they will be used, can be the more difficult aspect of having a rare law book collection.

What follows are twelve policy questions which should be determined by any law library in which a meant-to-be-used rare law books collection exists. The importance of having ready answers to these questions becomes even more apparent if one remembers that the user may have traveled hundreds of miles to use the collection for a limited period of time.

1. **Photocopying**
   a) Is it allowed?
   b) Who does it—user or staff member?
   c) If it must be done by a staff member,
      i) what is the charge for the service?
      ii) is there a back-up staff member who does it when the main staff member is not present?
      iii) are there ever any exceptions to the rule that this staff member must do the photocopying?

2. **Interlibrary Loan**
   a) What materials will you send out on interlibrary loan?
   b) Will you loan reprints? microfilm? (The fact that the state historical society to which I alluded previously is willing to send me the microfilm reels of the mid-nineteenth century newspapers I need is almost enough to make me forgive them for continuing to employ that irascible old lady to whom I alluded previously!)

3. **Hours of availability**
   Is the rare book collection accessible during the library's regular hours or only during the time the rare book librarian is present? What is done on days when that librarian is not present? Most important, does everyone on
the staff know the special collection's hours? If you have a student circulation assistant who, in an authoritative tone, tells a user on the phone that the collection is open until 6:00 p.m. when in fact it is only accessible until 4:00 p.m., you have a problem.

4. **Staff member present**

   Must a staff member be present while the user looks at the materials? If so, is there a designated back-up person for the days when the usual staff member is absent?

5. **User's possessions**

   Do you restrict what the user brings with him when he is using the rare items, i.e., pens, pencils, paper, other personal belongings? If you do restrict him as to these items, do you provide convenient and safe storage for those items?

6. **User's identity and purpose**

   Whom do you intend to serve by maintaining this collection—faculty? students? outside scholars? Must they show evidence of a scholarly purpose before being allowed to use the collection?

7. **Outside user**

   Do you recommend (or require) referrals from other schools or libraries for each outside user with an indication of the type of research to be done? Must this be written? Will a phone call suffice?

8. **Acknowledgement**

   Do you request (or require) that the scholarly user acknowledge the use of your collection in his resulting published article or book?

9. **Theft/security**

   Do patrons know to whom they should report suspected theft? Does the staff know how to deal with someone of whom they suspect theft or mutilation of rare materials?

10. **Tangential functions**

    Who is responsible for maintaining the photocopiers which serve the rare book collection?

    Who maintains the microform reader/printers?

    Who is in charge of preservation and repair of rare materials?

    Are there back-up persons designated for these functions when the main provider is not present?
11. Dissemination of Rules

Once the answers to all these and other questions regarding the rare books collection have been decided how is this information disseminated? Will they be found in a pamphlet? In your Library’s User’s Guide? Most important of all, does your entire staff know what the policies are?

12. Public Relations/Public Service Attitude

The ways in which you deal with the typical and atypical library user for your main collection may be very different from the way you deal with someone who would like to use a special collection. Probably subconsciously, many librarians develop incredibly possessive attitudes about their valuable rare books. To the extent this attitude hinders the use of the collection by an appropriate patron, it is bad public relations. Are you or someone on your staff guilty of this?

For libraries which are just beginning to deal with their rare books as separate special collections, it is extremely important to deal with these issues as soon as possible. For those libraries with long-established collections, it may be time to reassess policies and going through this list should provide a good starting point.

The second aspect of rare book collections which I wish to discuss is who will be in charge of the collection? Again an evolutionary process is involved. If you have three rare law books you probably do not need a rare book librarian. If you have three hundred rare law books, maybe you do need a staff member designated to look after this growing collection. Considerations of collection size aside, if it is being used and different rules for its use are being enforced, it is time to think about finding a librarian to maintain it.

At least three questions should be asked about the candidates for this position:

1. Education

Should this person be an historian, a librarian, or both? Harold Hyman, a noted legal historian at Rice University, has suggested that law libraries “. . . recruit into law school staffs trained historian-archivists. With respect to [this], extraordinarily well trained and able History ABDs and even PhDs are available for employment.” Morton Horwitz, the renowned Harvard legal historian, takes a somewhat different view: “Obviously the law librarian cannot become an expert in American history. But you should be aware
of how to get a research project off the ground. While the emphasis differs in degree, it is clear that both these scholars are concerned with the historical training of the person in charge of the collection. Contrast their concern with that of Lawrence McCrank who defines rare book librarianship thus:

Rare book librarianship . . . is the training of custodians for the ongoing and future care of and historic preservation of today's bookstock and libraries to prevent catastrophic loss by a rational transition to new forms of communications and information transfer. It is above all humanitarian, resourceful, and therefore central to librarianship and critical to the future of bibliographic and historical studies in the arts and humanities.

This definition seems to emphasize the librarian's training over the historian's training.

2. Experience

Rare book librarianship is a difficult field into which to go because there are so few positions available. Unless a library has a great deal of money, or prestige, or more likely both, with which to lure away a big name, it is probable that the course to follow is to hire a person new to the field who has taken appropriate coursework and who shows dedication to the field. Then plan on providing continuing education for that person once he or she is on the job.

3. Attitude

Attitude toward the scholarly user and toward the rest of the library is very important and very hard to measure. Nonetheless, as with candidates for all public service positions, this should be an important criteria in hiring.

Finally, I would like to engage in a bit of psychoanalysis. One of the major psychological obstacles faced by any legal scholar, and particularly the legal historian, can be summed up in these questions: Do I have something new and meaningful to say about a given event or concept in the law? Will the piece I write be an original contribution to the literature or warmed-over nonsense? These questions plague the scholar as he or she wades through the material, reads other scholars' interpretations, and tries to develop his or her own unique perspective. Obviously, you as librarians, are dealing with very insecure, anxious people. The more consistent and rational environment you can create for the scholar with reasonable
rules on the use of your rare books collection and helpful, knowledgeable librarians administering the collection, the better the situation will be for you and the nervous scholar.

As both a law librarian and legal scholar, I have found comfort and inspiration in the words of a gentleman who will be speaking to us later, Howell Heaney. He has said:

"What use have rare books?" The answer is none, if every question has been settled for all time, if evidence cannot be arranged and rearranged for different purposes; if each generation is born full-blown and need not struggle to amass and evaluate its own experience; if beauty and excellence are of no account.¹

NOTES

1. The names of the state, the libraries, and the people have been omitted to protect the innocent as well as the guilty.