

History in the Law Library: *Using Legal Materials to Explore the Past and Find Lawyers, Felons and Other Scoundrels in Your Family Tree*

by Kurt X. Metzmeier

Lawyers, by the very nature of the common law, encounter the past on a regular basis. Seeking rules of tort, they stumble onto to cases involving exploding steamboat engines, runaway horse buggies, and toxic patent medicines. Researching property law, they encounter echoes of squabbles within the English nobility and hear the rattling of the stagecoaches that settled the American West. It is only natural that many attorneys develop an interest in history and genealogy. Surprisingly, in their travels from courthouse to county library, from state archives to family history center, many lawyers researching their family history neglect the law library.



and local bar association publications, many of which offer biographical information on lawyers both famous and obscure. Most Kentucky law libraries have these materials for our state; the largest have them for other states.

Of course, the law library's primary purpose is to arrange and provide access to the type of statutes and appellate decisions that make up the law of the state and United States so that lawyers can find binding precedents. This means, as a practical matter, that only those few appellate decisions that the courts feel are relevant to the description and expansion of the law are ever published. Moreover, the thousands of cases that are never appealed beyond the trial court play little or no role in law libraries. Trial court records—orders, motions, court transcripts—are found in court archives, not law libraries.

Law Reports & Digests

As there are no indexes to law reporters, the tool for finding cases is the digest. Digests summarize the points of law in cases and arrange these summaries into encyclopedic sets of books familiar to any legal researcher. Digests are designed to help lawyers find cases on a precise legal topic, not for family historians looking for personal names. However, most digests have indexes loosely based on names: the table of cases index (indexed by the plaintiff's name) and its more recent counterpart, the defendant-plaintiff index. In modern digests, these are often combined into one index.

There are a number of digests—national, regional, and state. Some attorneys may remember the American Digest System, the massive set indexing nearly all U.S. published decisions. The unwieldy set covers a vast time period dating back to colonial times, but it has no tables of cases indexes until 1906 and no defendant plaintiff index until 1976. The table of cases in the Decennial Edition (1897-1906) does cover the early volumes.

Single state reporters are the easiest digests to use, if you can find them. For Kentuckians, the West's Kentucky Digest (1790-1985) and its successor, the Kentucky Digest, 2d. (1930-) are the best starting place. However, it is important to know these digests only index cases that were still good law in 1900

when West Publishing entered the digest market. Cases regarding obsolete legal principles—slavery, for instance—are not included. One needs to seek out the many pre-West Kentucky digests for complete coverage, although you have to go to the UofL or UK libraries to find them. See the table listing all published Kentucky digests in my article, "Blazing Trails in a New Kentucky Wilderness: Early Kentucky Case Law Digests," 93 Law Lib. J. 93-108 (2001).

Session Laws & Legislative Records

Prior to the expansion of the executive branch in the early 20th century, much of the business of government ran through the legislature, which, through its power to raise revenue appropriate funds, oversaw most statewide institutions. In addition, through private legislation—laws benefiting a single individual or institution—many early state legislatures acted to provide constituents with relief in cases where no court or general legislation could do so. In its private acts, the legislature granted divorces, naturalized citizens, granted personal service contracts, corrected deeds, and other documents, and licensed mills, dams, and ferries. These private acts are a great untapped resource for family historians in those states where such legislation was allowed.

Private legislation is found in the session laws of state legislatures. In Kentucky, such laws were part of the Kentucky Acts, and can be found in the volumes published each session until the 1891 constitution banned private laws (mostly because they had been used to dispense political favors). For states that allowed private and local laws (including Kentucky), there often is a separate index for them. In addition, works like *Complete Index to Names of Persons Places and Subjects Mentioned in Littell's Laws of Kentucky* by W.T. Smith (1931) and *Personal Names in Henning's Statutes at Large of Virginia* by Joseph J. Casey (1896) provide comprehensive personal name indexing to specific sets of laws. Most Kentucky law libraries have print collections of Kentucky Acts. The largest (UofL and UK) subscribe to Hein's *Session Laws of American States*, a microform set that covers all states.

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There are some good reasons for this omission. Law libraries surrender their secrets begrudgingly through the use of specialized techniques and tools designed for the practice of law, not the recovery of history. Also, family history research efforts in law libraries are often fruitless as only the life stories of the unlucky few are ensnared in their statute books and legal reporters—which are, after all, a grim record of business tragedy, crimes both horrific and banal, and sagas of sordid family squabbles. Nonetheless, for experienced researchers who know how to use them, law libraries have the potential to flesh out the story of a family, even if they are less useful in building its skeleton. And for one special group of researchers—those whose families have lawyers and judges in their family tree—they are an essential step on the research circuit.

Law libraries hold a number of sources of information for the family historian: published opinions of courts of appeal, collections of laws passed by the state legislature, and state

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An additional resource are collections of legislative documents found appended to legislative journals. They contain annual reports of prisons, mental institutions, and schools for the blind and deaf. In Kentucky, the "Documents" series covers the period from the 1840s to the 1900s, and its reports includes rolls of prisons and lunatic asylums, as well as annual lists, with salaries, of public officials. (Prior to 1840, these documents were published in the House and Senate Journals). Adelaide R. Hassé's ponderously titled *Index of Economic Material in Documents of the States of the United States* (1910) dutifully catalogs these documents.

Bar Association Materials

State and local bar association journals and proceedings can be great sources of biographical information. Many have annual necrologies with brief bios and articles about notable lawyers and judges. Dennis A. Dooley's *Index to State Bar Association Reports and Proceedings* (1942) indexes the bar publications of all fifty states.

In Kentucky, annually published *Proceedings of the Kentucky State Bar Association* (1901-1994) has a wealth of information for researchers. Throughout the 1920s and 1930s, an annual "Great Lawyers of Kentucky" was

published, as well as an annual necrology of members. (See my "Using Legal History Resources in Researching Family History," 35 *Kentucky Ancestors* 141-43 (2000) for a name index to the "great lawyers" series.)

Bar Histories & Lawyer Biographies

The late-nineteenth and early twentieth century saw a flourishing of interest in the history of state and local bars. A number of "bench and bar" histories were published, usually largely made up of biographies of local lawyers and judges. The leading such work in Kentucky is H. Levin's *Lawyers and Lawmakers of Kentucky* (1897), which includes hundreds of biographies, articles on the 19th century court system, and several sketches of local bar associations. The 1982 reprint has a new, comprehensive surname index. Former Federal Judge Mac Swinford's humorous *Kentucky Lawyer* (1943) is also worth consulting. More limited works include L.F. Johnson's *History of the Franklin County Bar* (1932) and E.C. O'Rear, *A History of the Montgomery County (Ky.) Bar* (1945). For a comprehensive listing see "Legal History Resources" in Metzmeier et al, *Kentucky Legal Research Manual 3d.* (2005).

Works for surrounding states include W.V.N. Bay, *Reminiscences of the Bench and Bar of Missouri* (1878), Joshua A. Caldwell, *Sketches of the Bench and Bar in Tennessee* (1898), Henry Stuart Foote, *The Bench and*

the Bar of the South and Southwest (1876), George I. Reed, *Bench and Bar of Ohio* (1897) and Charles W. Taylor, *Bench and Bar of Indiana* (1895). One can also find legal biographies on the web. The Federal Judicial Center *air.fjc.gov* has information on all federal judges. Michigan attorney Lawrence Kestenbaum's wryly macabre *Political Graveyard* (*politicalgraveyard.com*) also is a source of lawyers' biographies.

Researching local and family history is an interesting and rewarding diversion from the immediate and pressing work of practicing law. It is tempting to escape to the historical society and leave the legal world behind. However, if you view the law library through different eyes it can be as useful to this enterprise as it is in divining the contours of the homestead exemption or the elements to be proved in a qui tam action.

Portions of this article adapted from "Family Law Resources in Law Libraries," 29 *Bluegrass Roots* 124 (2003).

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