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# Forensic Bibliography: Reconstructing the Library of George Wythe

Linda K Tesar

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*The Wolf Law Library at the College of William and Mary initiated a project to re-create the library of George Wythe, the founding father of American legal education. A relatively small number of Wythe's books are still extant today; for some volumes, there is strong documentary evidence to prove conclusively he owned specific editions of particular titles. Additionally, four bibliographies with varying levels of substantiating information provide insight into the contents of Wythe's library. Examination of these sources launched an excursion into bibliographic history and rare book collecting that illuminates the difficulties in attempting to establish the exact editions contained in a historical personal collection. The project expanded the known contents of George Wythe's library and altered the law library's existing collection development policy to accommodate the new discoveries.*

¶1 At the College of William and Mary, much institutional pride derives from the fact that the law school's history traces back to George Wythe, the first law professor in the country and one of the nation's preeminent founding fathers. History, though, has unkindly forgotten many of Chancellor Wythe's most important contributions—both to our fledgling nation and to the beginnings of university-based legal education. Wythe taught a who's who gallery of statesmen from Thomas Jefferson to John Marshall to Henry Clay,<sup>1</sup> and some writers have suggested that no

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\* © Linda K. Tesar, 2013. This is a revised version of the winning entry in the open division of the 2012 AALL/LexisNexis Call for Papers Competition. An earlier draft of this paper was submitted in a seminar class at William and Mary Law School taught by Professor Warren Billings. Portions of the paper, particularly the biographical section, are similar to those in a paper entitled "George Wythe's Library: The Man and Books That Shaped Virginia Law," delivered at the 2011 Virginia Forum. My thanks go to Warren Billings for his wise counsel and suggestions; to Jim Heller, Fred Dingley, and Stephen Blaiklock for their comments on various drafts of this paper; and to Andy Howard and Sean Renaghan for their help in taming the Wythe Collection spreadsheets.

\*\* Head of Technical Services, Wolf Law Library, College of William and Mary, Williamsburg, Virginia.

1. Among those who shared the magic of Wythe's teaching were Thomas Jefferson, third president, secretary of state, minister to France and governor of Virginia; John Marshall, chief justice of the United States; Henry Clay, secretary of state, speaker of the House of Representatives and United States senator from Kentucky; Littleton W. Tazewell, United States senator and governor of Virginia; John Brown, one of the first two United States senators from Kentucky; and St. George Tucker, John Coalter and Spencer Roane, justices of the Virginia Supreme Court.

ALONZO THOMAS DILL, *GEORGE WYTHE: TEACHER OF LIBERTY* 1–2 (1979). Dill omits two students frequently listed by historians, James Monroe, fifth president of the United States, and Edmund Randolph, first attorney general of the United States. For a thoughtful discussion of Wythe's students and his teaching methods, see Thomas Hunter, *The Teaching of George Wythe*, in 1 *THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES* 138 (Steve Sheppard ed., 1999).

other law professor can claim a similar level of success if that success is measured by the careers of his students.<sup>2</sup> In his own time, Wythe enjoyed a reputation as a man of impeccable character and judgment<sup>3</sup> who amassed a law library noted for its size and depth.<sup>4</sup> The natural response of a librarian to having such an educational luminary in the organization's past is to discover as much as possible about that person's library and, if the means present themselves, to re-create it. What follows, then, is an account of the effort to re-create George Wythe's library at the College of William and Mary's Wolf Law Library: the sources, the questions, the decisions, and the books themselves. The discussion will elaborate on Wythe's history, illuminate other attempts to identify his library, and discuss the collection policy derived from the process.

¶2 In 2005, Kevin Butterfield, head of technical services at William and Mary's law library, devised a plan to re-create the legal portion of George Wythe's library and, in so doing, to honor Wythe's groundbreaking role as a legal educator. Butterfield and the library's director, Jim Heller, derived their purchase list for the new George Wythe Collection from an internal Colonial Williamsburg bibliographic memo written by Barbara C. Dean in 1975.<sup>5</sup> While Dean's memo provided a starting point for the development of the collection, Heller and Butterfield winnowed out many religious, literary, and scientific titles that were less likely to have been used by Wythe in his capacity as law professor or judge. The remaining seventy-two titles constituting the library's purchasing list covered various aspects of law, ethics, history, and political science.

¶3 The development policy associated with the new collection enumerated three categories for purchase: books Wythe assigned to his students, books known to have been owned by Wythe, and books Wythe was known to have read or thought to have owned. Heller and Butterfield chose to focus initially on the first two categories, and within those two, gave collecting preference to treatises over case reports.<sup>6</sup> Their progress in the first few years yielded a collection of thirty titles—nineteen new purchases and eleven transfers from the Wolf Law Library's existing rare book collection. Early purchases included William Blackstone's *Commentaries on the Laws of England*, Matthew Hale's *History of the Pleas of the Crown*, and Daniel Call's copy of Wythe's own case reports, *Decisions of Cases in*

2. See, e.g., Dice Robins Anderson, *The Teacher of Jefferson and Marshall*, 40 S. ATLANTIC Q. 327, 341 (1916); Paul D. Carrington, *The Revolutionary Idea of University Legal Education*, 31 WM. & MARY L. REV. 527, 538 (1990).

3. See Thomas Jefferson, *Biographical Notes on George Wythe*, in THE THOMAS JEFFERSON PAPERS SERIES 1: GENERAL CORRESPONDENCE, 1651–1827, <http://hdl.loc.gov/loc.mss/mtj.mtjbib023877> (image 219) (last visited Nov. 1, 2012) (“No man ever left behind him a character more venerated than G. Wythe. His virtue was of the purest tint; his integrity inflexible, and his justice exact . . .”); B.B. Minor, *Preface*, in GEORGE WYTHE, DECISIONS OF CASES IN VIRGINIA BY THE HIGH COURT OF CHANCERY, at vii, viii (2d ed. 1852).

4. Douglas L. Wilson, *Jefferson's Library*, in THOMAS JEFFERSON: A REFERENCE BIOGRAPHY 157, 167 (Merrill D. Peterson ed., 1986).

5. Memorandum from Barbara C. Dean, Colonial Williamsburg Found., to Mrs. Stiverson, Colonial Williamsburg Found. (June 16, 1975) (on file at Wolf Law Library, College of William and Mary) [hereinafter Dean Memorandum].

6. Wolf Law Library, Development Policy for George Wythe Collection (2005) (on file at Wolf Law Library, College of William and Mary).

*Virginia by the High Court of Chancery*. In 2009, Butterfield left William and Mary, and I inherited the task of developing the Wythe Collection. With the number of purchased items on the original list steadily increasing, in early 2010 I began a project to update Barbara Dean's list of Wythe books with new discoveries and further research.

### George Wythe and His Books

¶4 The project of identifying Wythe's library required gathering information on the man himself. George Wythe was probably born in 1726 in Elizabeth City County, Virginia.<sup>7</sup> After a legal apprenticeship with an uncle, he moved to Williamsburg in 1748 to accept appointments to the clerkships of "two of the most important committees of the House of Burgesses."<sup>8</sup> During Wythe's tenure in these positions, he also served a brief stint as Virginia's youngest-ever attorney general<sup>9</sup> and developed a legal practice, with clients who included George Washington and Richard Henry Lee.<sup>10</sup> Historians believe Wythe most likely accepted apprentices before he began teaching his most famous pupil, Thomas Jefferson, in 1762,<sup>11</sup> but no records verify or identify earlier students. Other clerks followed Jefferson, although their precise number is unknown.<sup>12</sup>

¶5 As a well-respected leader in Virginia, Wythe represented the Commonwealth during the Revolution by participating as a delegate to the Continental Congress, signing the Declaration of Independence, and briefly attending the Constitutional Convention. Wythe also participated in the effort to rewrite Virginia's code of laws, and presided over Virginia's convention to ratify the Constitution. In 1778, the leaders of Virginia further recognized his legal knowledge and skills by appointing him to the newly created High Court of Chancery.<sup>13</sup>

¶6 A year after Wythe's appointment to the court, Thomas Jefferson, then governor of Virginia, convinced the board of visitors of the College of William and Mary to reorganize the curriculum and to create the chair of Professor of Law and Police (roughly the equivalent to contemporary policy or political science).<sup>14</sup> With Jefferson's influence, the board named Wythe to fill the new chair, the first of its

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7. The exact date of Wythe's birth remains unknown. Most biographies list either late 1726 or early 1727. See DILL, *supra* note 1, at 3.

8. Hunter, *supra* note 1, at 140.

9. OSCAR L. SHEWMAKE, *THE HONORABLE GEORGE WYTHE* 10 (1950).

10. DILL, *supra* note 1, at 18.

11. Hunter, *supra* note 1, at 142.

12. Wythe's law clerks included James Madison, bishop of Virginia and president of William and Mary College; and St. George Tucker, Wythe's successor as professor of law and police at William and Mary and author of a Virginia edition of Blackstone's *Commentaries*. *Id.* at 143.

13. As Dill explains:

The jurisdiction of a chancery court was restricted to giving relief where the common law offered none, where its remedy was imperfect, or where the common law would do an injustice to being applied in causes not intended to be comprehended by the common law. . . . [A] High Court of Chancery required men of high probity and superlative legal ability.

DILL, *supra* note 1, at 41.

14. W.H. Bryson, *Legal Education*, in *VIRGINIA LAW BOOKS: ESSAYS AND BIBLIOGRAPHIES* 316, 336–37 (W. Hamilton Bryson ed., 2000).

kind in this country and only the second created in Anglo-American law (the first was William Blackstone's Vinerian chair at Oxford).<sup>15</sup>

¶7 In his popular classes, Wythe introduced both mock trials and mock legislatures to American legal education.<sup>16</sup> His students read Blackstone, studied the English case reports, and attended biweekly lectures. Wythe is believed to have taught around two hundred students at William and Mary,<sup>17</sup> the most notable of whom were future U.S. Supreme Court Justices John Marshall and Bushrod Washington.<sup>18</sup> After teaching for nearly ten years, Wythe, unhappy with the direction of academic life at the College, left William and Mary in 1789 and moved to Richmond where the High Court of Chancery had relocated the same year. He lived there until his death in 1806.

¶8 The process of re-creating Wythe's library begins with a few indisputable facts. If Wythe made an inventory of his library, it does not exist today. No body of Wythe's papers has been found,<sup>19</sup> nor has anyone identified pertinent family documents. According to his biographers, some of Wythe's books were sold by his grandnephew before Wythe died in 1806.<sup>20</sup> Wythe died childless, but he bequeathed the entirety of his library to Thomas Jefferson in an 1806 codicil to his will.<sup>21</sup> The executor of that will, William DuVal, estimated the value of the collection to be "about £500."<sup>22</sup> At Jefferson's request, Jefferson's cousin and agent, George Jefferson, received the books from DuVal and created an inventory of the volumes before

15. *Id.* See Davison M. Douglas, *The Jeffersonian Vision of Legal Education*, 51 J. LEGAL EDUC. 185, 186 n.3 (2001) for a brief discussion of early university legal educators. Further controversy on the primacy of Wythe's role involves the teaching career of Tapping Reeve and the founding date of the Litchfield Law School. Many articles have been written on the topic, *see, e.g.*, Charles R. McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 WASH. U. L.Q. 597 (1981); Steve Sheppard, *An Introductory History of Law in the Lecture Hall*, in 1 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES, *supra* note 1, at 13–14; Andrew M. Siegel, "To Learn and Make Respectable Hereafter": *The Litchfield Law School in Cultural Context*, 73 N.Y.U. L. REV. 1978 (1998); and the National Park Service has weighed in as well (erecting a sign at the site of Litchfield stating it was the nation's first law school), *see The Best that Is in the Old*, 55 A.B.A. J. 843 (1969). Regardless of which can claim to be the first law school, Litchfield or William and Mary, Wythe was the first professor on this continent to teach law classes at a college or university.

16. Hunter, *supra* note 1, at 145–46.

17. *Id.* at 164 n.95.

18. Douglas, *supra* note 15, at 186 n.4.

19. *See* Hunter, *supra* note 1, at 145. As late as 1810, Wythe's lecture notes were still in existence. Hunter quotes an 1810 letter from Governor John Tyler to Thomas Jefferson in which Tyler asked Jefferson to edit Wythe's lecture notes: "[T]hey will be very valuable, there being so much of [Wythe's] own sound reasoning upon great principles and not a mere servile copy of Blackstone, and other British commentators." Sadly, Jefferson declined the request, citing his long absence from the legal profession, and no other trace of Wythe's lecture notes has been found. *Id.*

20. Julian P. Boyd, *The Murder of George Wythe*, 12 WM. & MARY Q. (3d ser.) 513, 519 (1955).

21. B.B. Minor, *Memoir of the Author*, in WYTHE, *supra* note 3, at xi, xxxvii ("I give my books and small philosophical apparatus to Thomas Jefferson, president of the United States of America: a legacie, considered abstractly, perhaps not deserving a place in his musaeum, but, estimated by my good will to him, the most valuable to him of any thing which i have power to bestow.").

22. MARY GOODWIN, *THE GEORGE WYTHE HOUSE: ITS FURNITURE AND FURNISHINGS* 42 (1958), available at <http://research.history.org/DigitalLibrary/View/index.cfm?doc=ResearchReports/RR0216.xml>.

sending the collection to Monticello later in 1806. Unfortunately, the catalog created by George Jefferson did not survive.<sup>23</sup>

¶9 It is impossible to trace the location of all the books Wythe owned, but in her seminal work, *Catalogue of the Library of Thomas Jefferson*, Millicent Sowerby identified several volumes with a Wythe provenance.<sup>24</sup> Existing volumes from Wythe's bequest have been discovered within the collection Jefferson sold to the Library of Congress in 1815. These titles bear Wythe's signature, his armorial bookplate, or manuscript notes identifying Wythe as the owner. The Library of Congress today owns several legal, political, and historical volumes as well as a few religious texts with an unquestionable Wythe provenance. Libraries across the Commonwealth of Virginia hold other fugitive items. For example, the John D. Rockefeller, Jr., Library in Colonial Williamsburg owns John Adams's *Thoughts on Government Applicable to the Present State of the American Colonies*, which is inscribed "John Adams to George Wythe." The Library of Virginia holds at least four different Virginia session law titles with Wythe's signature on the title page, and the University of Virginia, the College of William and Mary, and the Virginia Historical Society each own volumes with Wythe's distinctive bookplate or his manuscript signature. In total, more than fifty of Wythe's actual books have been located in existing collections.

¶10 Identifying the titles Wythe authored or coauthored provided another ready source of volumes for the Wythe Collection. In 1795, Wythe published a collection of case reports, *Decisions of Cases in Virginia by the High Court of Chancery*, to document his decision making and, in part, to rebut those decisions that the Virginia Court of Appeals had overturned. B.B. Minor republished these reports in 1852 and expanded them to include all known case reports by Wythe. This included several cases published individually in pamphlet form from 1797 to 1798. Wythe also participated on the committee to revise the Virginia code of laws in 1776, and presumably owned a copy of the resultant report, *Report of the Committee of Revisors Appointed by the General Assembly of Virginia in 1776*. Similarly, Wythe collaborated on two compilations of Virginia statutes published in 1769 and 1785.

¶11 To move beyond Wythe's extant books and his publications required a wider focus, and it was at this point that the hunt began and the study turned to the bibliographic record. Somewhat surprisingly, given the acknowledged scholarly neglect surrounding Wythe, at least four bibliographies devoted to the contents of Wythe's library have been created. Examining them propelled the project into the realm of bibliographic detection. Each bibliography provided an illuminating glimpse into the depth of research required to reconstitute a library such as Wythe's, and demonstrated that each successive researcher endeavored to build upon the previous efforts and to expand the known scope of Wythe's library. Each of these bibliographies is discussed in detail below.

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23. Jeremy Dibbell, "Mr. Wythes Books &c Are Packed Up . . .", MASS. HIST. SOC'Y, [www.masshist.org/objects/2009june.php](http://www.masshist.org/objects/2009june.php) (last visited Dec. 6, 2012).

24. CATALOGUE OF THE LIBRARY OF THOMAS JEFFERSON (E. Millicent Sowerby comp., 1952).

### Goodwin's Bibliography

¶12 The oldest bibliography dates from 1958, when Mary R.M. Goodwin, a senior researcher at the Rockefeller Library, compiled it as part of her study for Colonial Williamsburg, *The George Wythe House: Its Furniture and Furnishings*.<sup>25</sup> Goodwin identified fifty-four titles in three categories: law books, journals, and miscellaneous. She relied primarily on Sowerby's *Catalogue*, which described conclusive marks of Wythe's ownership on ten volumes: nine contain the bookplate of George Wythe and one features his signature. Sowerby attributed a further eight to Wythe's probable ownership by comparing Wythe's manuscript notes in volumes with his bookplate to other volumes from Jefferson's collection. Some of Sowerby's determinations were less than definitive; for example, she described a Library of Congress copy of *Cases Argued and Decreed in the High Court of Chancery* as containing manuscript notes which "could be in the handwriting of George Wythe."<sup>26</sup> Although no other distinguishing marks point to Wythe's ownership, Sowerby's attributions are logical and fit within the known habits and tastes of Wythe. Goodwin gleaned two other titles from Sowerby: parallel Greek and Latin editions of *The Iliad* and *The Odyssey*. Sowerby, however, makes no mention of Wythe in her descriptions of Homer's works.<sup>27</sup>

¶13 Goodwin next turned to records of eighteenth-century merchants to determine what book purchases Wythe may have made from any of them. She identified titles Wythe bought from the Williamsburg Printing Office or ordered from John Norton and Sons of London. Her sources included the *Virginia Gazette Daybooks, 1764–1766* and Frances Mason's compilation of company correspondence, *John Norton & Sons, Merchants of London and Virginia*. Yielding twenty-four entries on Goodwin's list, these two sources prove the usefulness of consulting merchant records to discover book ownership information. A typical letter quoted from the John Norton correspondence follows:

To  
John Norton Esq.  
Merchant in London  
Dear Sir:  
I beg the favour of you to get the under-mentioned books, and send them by an early opportunity to  
Your humble servant  
G. Wythe  
Williamsburg  
7th May 1770

Books to be sent to G. W.  
Andrews' reports  
Atkyns' reports

25. GOODWIN, *supra* note 22.

26. 2 CATALOGUE OF THE LIBRARY OF THOMAS JEFFERSON, *supra* note 24, at 202 (catalog number 1744).

27. See GOODWIN, *supra* note 22, at xlv. Goodwin wrote concerning *The Iliad*: "Jefferson had six editions of Homer—none identified as Wythe's—but we know that an edition was in Wythe's library." Regarding the inclusion of *The Odyssey*, Goodwin noted: "Not identified as Wythe's— but a copy of the work was undoubtedly in Wythe's library."

Bunbury's reports  
 Burrow's reports  
 Fortescue's reports  
 Foster's reports  
 Melmoth's reports  
 Shower's cases in parliament  
 [Enclosure]

Be pleased to add to the catalogue in the letter the journals of the house of commons since 1766.

G. W.  
 8:May 1770<sup>28</sup>

Aside from substantiating the inclusion of these titles in Goodwin's bibliography, the letter proves invaluable in reconstituting Wythe's library for a number of other reasons. First, it illustrates the depth of Wythe's collection. The letter also demonstrates that the records of Wythe's time frequently contain only general bibliographic information, and highlights the need for the researcher to rely on other clues in the source material. To identify specific editions of the works in question, Goodwin resorted to library union lists and bibliographies of law to identify any reports published or in print in 1770 under the appropriate author's name. For example, a search of WorldCat for "Andrews' reports" reveals that only the 1754 compilation of cases reports, *Reports of Cases Argued and Adjudged in the Court of King's Bench, in the Eleventh and Twelfth Years of the Reign of His Present Majesty King George the Second*, was published before 1770 with "Andrews" as an author. Without the date of the letter itself, two later editions might have contended with the 1754 edition for inclusion in a Wythe library.<sup>29</sup>

¶14 For the ten remaining titles in her list, Goodwin explored the special collections of the Library of Virginia<sup>30</sup> and consulted the 1937 dissertation by W. Edwin Hemphill, "George Wythe, the Colonial Briton."<sup>31</sup> The Hemphill titles relied upon notes written by Thomas Jefferson in his commonplace book while studying law under Wythe.<sup>32</sup> Hemphill notes that the pertinent portion in Jefferson's book,

written between 1774 and 1777, was based, in keeping with Jefferson's growing interest in politics, upon more philosophical legal materials, including Lord Kames' fourteen Historical Legal Tracts (first published in 1758), Sir John Dalrymple's *Essay towards a General History of Feudal Property in Great Britain* (London, 1757), and Hale's *History of the Common Law* (London, 1716).<sup>33</sup>

28. JOHN NORTON & SONS: MERCHANTS OF LONDON AND VIRGINIA 133–34 (Frances Norton Mason ed., 1937) [hereinafter JOHN NORTON & SONS].

29. Editions were published in Dublin in 1791 and London in 1792. While less likely to have been purchased by Wythe so late in his career, without the date of the letter their existence before his death in 1806 would have reduced the certainty that he owned the 1754 edition.

30. GOODWIN, *supra* note 22, at xlv. Wythe's signature marks the fly-leaf of a volume of the *Acts of the General Assembly of Virginia* owned by the Library of Virginia.

31. W. Edwin Hemphill, *George Wythe, the Colonial Briton: A Biographical Study of the Pre-Revolutionary Era in Virginia* (1937) (unpublished Ph.D. dissertation, Univ. of Va.) (on file at Wolf Law Library, College of William and Mary).

32. A commonplace book is comparable to a modern student's notebook.

33. Hemphill, *supra* note 31, at 127.



Goodwin cross-checked these volumes against Sowerby's catalog and reasoned that Wythe must have owned copies, perhaps in some cases earlier editions than Jefferson's.

¶15 The use of Jefferson's commonplace book as a resource for Wythe's library raises a few questions. The first is what impact should the dates of Jefferson's notes have upon the inclusion of these titles in the Wolf Law Library's George Wythe Collection? According to Gilbert Chinard, in his introduction to *The Commonplace Book of Thomas Jefferson*:

[I]t seems that we may assume with reasonable certainty: that the bulk of the Commonplace Book represents notes taken by Jefferson on law, political science, and religion during his formative years; that there is little doubt that the first hundred pages or so, containing some 550 entries, were compiled at a time when Jefferson, either a student of law or a young lawyer, was primarily interested in questions of legal procedure; that the articles on feudal laws, the survey of the federative system of government [sic], the extracts from Montesquieu and Beccaria, the history of the Common law (articles 550 to 882) were written after 1774 and not later than 1776 . . . .<sup>34</sup>

¶16 The second question is at what point, if any, did Jefferson's entries no longer reflect the suggestions and tutelage of Wythe? Jefferson studied law under Wythe from 1762 to 1767, yet Goodwin's work on the Wythe house included titles generally thought to have been noted in Jefferson's commonplace book a decade later. Based on this evidence, would it be reasonable to assume that Wythe also owned these titles? The third question has to do with collection development—should the Wolf Law Library include these titles if no other corroboration of Wythe's ownership could be uncovered?

### Dean's Bibliography

¶17 Nearly two decades after she compiled it, Goodwin's short bibliography became the genesis of the original source for the Wolf Law Library's collection development plan, Barbara C. Dean's 1975 bibliographic memo. To Goodwin's analysis, Dean added titles revealed by scouring newer research than that available in 1958, and her additions further illustrated the need to pursue a variety of sources in the written record. Dean's search comprehended the entire range of Wythe's known tastes in reading. She divided 189 titles into six categories of association: (1) titles known to have been owned by Wythe; (2) titles Wythe purchased from the *Virginia Gazette* office or ordered from John Norton and Sons; (3) titles noted in the commonplace books of Wythe's students (both his William and Mary students and his law clerks) and presumably assigned by Wythe; (4) titles known to have been read by Wythe; (5) titles written or collaborated on by Wythe; and (6) other titles illustrative of Wythe's time.<sup>35</sup>

¶18 In her first section, Dean enlarged upon Goodwin's entries by adding some of Wythe's published cases and combing through Wythe's correspondence as reported in the early volumes of *The Papers of Thomas Jefferson*. Of the forty-six titles described in this section, twenty-two derived from Goodwin's research as dis-

34. THE COMMONPLACE BOOK OF THOMAS JEFFERSON 13–14 (Gilbert Chinard ed., 1926).

35. Dean Memorandum, *supra* note 5.

cussed above. Dean identified two titles that Sowerby connected to Wythe and one that Hemphill linked to him but which Goodwin overlooked. Dean also included seven titles representing individual case reports from Wythe's decisions as chancellor on Virginia's High Court of Chancery. Wythe's letters to and from Jefferson indicate that Wythe received eight other publications in a shipment from Jefferson while the latter was minister to France.<sup>36</sup> Dean verified another title by searching contemporaneous newspapers and discovering that Wythe advertised in 1771 in the *Virginia Gazette* seeking the return of a missing volume from a set of books:

I miss a third volume of Burrow's Reports. Whether it was lent out I forget. Perhaps some Gentleman's servant carried it from the Capitol by mistake last October court. Whoever will let me know where it is, I shall be obliged to him for the information.

George Wythe<sup>37</sup>

¶19 Dean also found it helpful to delve into the special collections of the University of Virginia, where she uncovered three volumes containing the bookplate of George Wythe.<sup>38</sup> The collections of Colonial Williamsburg yielded a copy with Wythe's signature, and from the Botetourt Inventory,<sup>39</sup> Dean included the entry "three journals from Lord Botetourt's estate."<sup>40</sup> Unfortunately, Dean provided no other information to pinpoint the latter title.

¶20 Dean's next section, titles Wythe purchased, followed the same research as Goodwin and added four new titles—three from the *Virginia Gazette Daybooks* which for unknown reasons Goodwin did not include, and one from the correspondence between Jefferson and Wythe. More interestingly, Dean differed from Goodwin on the identity of three items for which they listed the same sources. The disagreement highlights one of the fundamental problems in any effort to reconstitute a library where the endeavor rests upon incomplete bibliographic information.

¶21 Records from the Williamsburg Printing Office indicate that Wythe purchased "Franklin's Pamphlet" in February of 1764.<sup>41</sup> Goodwin concluded that this notation possibly represented Benjamin Franklin's *Cool Thoughts on the Present Situation of our Public Affairs*, published "ca. 1763."<sup>42</sup> Dean identified the "Franklin Pamphlet" as *The Interest of Great Britain Considered, With Regard to Her Colonies, and the Acquisition of Canada and Guadaloupe*. Searching Charles Evans's

36. Letter from Thomas Jefferson to George Wythe (Sept. 16, 1787), reprinted in 12 THE PAPERS OF THOMAS JEFFERSON 127, 129 (Julian P. Boyd ed., 1955).

37. Notice, VIRGINIA GAZETTE (RIND), Feb. 7, 1771, at 4. Interestingly, Dean did not note, as Goodwin did, that Wythe ordered this title from John Norton. See GOODWIN, *supra* note 22, at xlv; JOHN NORTON & SONS, *supra* note 28, at 133–34.

38. Dean Memorandum, *supra* note 5, at 4. One of these verifies Goodwin's assumption that Wythe must have owned a copy of Homer's *Iliad*.

39. The Botetourt Inventory refers to the inventory of items owned by Norborne Berkeley, Baron de Botetourt (1718–1770). The published version of this, COLONIAL WILLIAMSBURG FOUND., AN INVENTORY OF THE CONTENTS OF THE GOVERNOR'S PALACE TAKEN AFTER THE DEATH OF LORD BOTETOURT (1981), appeared six years after Dean's memo. Presumably, Dean worked with the unpublished manuscript.

40. Dean Memorandum, *supra* note 5, at 6.

41. GOODWIN, *supra* note 22, at xlv.

42. *Id.*

monumental *Bibliography of Early American Imprints* justifies Dean's conclusion. While Evans did attribute *Cool Thoughts* to Franklin, he indicated the first date of publication as being April 26, 1764,<sup>43</sup> a few months too late to support Goodwin's supposition. What cannot be determined is the precise edition of the Franklin work. Dean listed the original publication information as London, 1760. *The Interest of Great Britain Considered* was indeed published in London in 1760, but reprints followed in Dublin and Philadelphia the same year, and a second edition appeared in London in 1761. Unfortunately, it is impossible to definitively answer whether Wythe owned one of the London editions, the one from Dublin, or the one from Philadelphia.

¶22 The second disputed title derived from Wythe's July 1751 purchase of "Puffendorf's Introduction." Goodwin described that purchase as the 1732 French edition, *Introduction a l'Histoire Generale et Politique de l'Univers: où l'on Voit l'Origine, les Révolutions, l'Etat Présent, & les Interêts des Souverains*, whereas Dean entered the volume as the 1748 English title, *An Introduction to the History of the Principal Kingdoms and States of Europe*. Goodwin based her opinion on the existence of the French title in Sowerby's catalog of Jefferson's library. Presumably Dean chose the publication nearest in time to the date of Wythe's purchase. She may also have determined that it was more likely that Wythe owned the English edition.<sup>44</sup>

¶23 The third disputed entry centered on an order Wythe placed with John Norton and Sons in the letter dated May 8, 1770. Wythe asked Norton to send him "Fortescue's reports." Goodwin interpreted this to refer to the second edition of Sir John Fortescue's *De Laudibus Legum Angliae*, published in 1741. Again her choice seems to rest upon the existence of this title in Jefferson's library. Dean, perhaps understanding that Goodwin's choice would more accurately be described as a treatise rather than case reports, chose to list Fortescue's *Reports of Select Cases in All the Courts of Westminster Hall* from 1748. For this listing, Wythe's own designation of "reports" strongly suggests the case reports volume rather than the treatise.

¶24 Dean next turned to a variety of sources to create the section on books Wythe assigned to his students, and it comprises the largest single portion of her bibliography. It also underscores the rewards of consulting the papers and manuscripts of persons contemporary with the library's owner. Of the eighty-seven

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43. The WorldCat record for Franklin's *Cool Thoughts* contains the bibliographic note: "Attributed to Benjamin Franklin by Evans. First published as a supplement to the Pennsylvania journal, Apr. 26, 1764." In this note, "Evans" refers to the fourteen-volume opus, CHARLES EVANS, *AMERICAN BIBLIOGRAPHY* (1941–1959).

44. Only the recent discovery of Jefferson's inventory of Wythe's library completely resolves the dilemma of which title to attribute to Wythe's ownership. On page six of his inventory, Jefferson lists "Puffendorf's introdn to the hist. of Europe 1st. v. 8vo." Of course, it is entirely possible that Wythe owned both titles. For digital images of the original list, see *Inventory of the Books Received by Thomas Jefferson from the Estate of George Wythe, Circa September 1806*, MASS. HISTORICAL SOC'Y, [http://www.masshist.org/database/doc-viewer.php?item\\_id=1768](http://www.masshist.org/database/doc-viewer.php?item_id=1768) (last visited Oct. 17, 2012) [hereinafter *Jefferson's Inventory*]. A transcribed version of the entries is available at *Library of George Wythe*, THOMAS JEFFERSON LIBRARIES, <http://tjlibraries.monticello.org/transcripts/wythelibrary/6.html> (last visited Oct. 17, 2010).

titles, five duplicated entries elsewhere in Dean's memo, and fourteen derived from Goodwin's list. From the remaining total, Dean discovered forty-one in John Marshall's *Law Notes*, published in the first volume of *The Papers of John Marshall*.<sup>45</sup> In preparing the chief justice's papers for publication, the editors of the Marshall papers transcribed Marshall's notations and listed the specific titles and precise editions that Marshall used. These notes date to John Marshall's brief adventure as one of Wythe's law students at William and Mary in 1780, and probably represent books Wythe owned and recommended.<sup>46</sup>

¶25 For the other titles in this section, Dean utilized multiple sources, including biographies of Jefferson,<sup>47</sup> Jefferson's papers and commonplace book, and a dissertation on the early Virginia legal profession by Alan Smith.<sup>48</sup> For eleven titles, Dean relied upon a biography of Wythe. In describing Jefferson's legal education, William Clarkin wrote:

In his actual readings under Wythe, we cannot place exactly the books that Jefferson read. But we do know that he studied the statutes of English law, the precedents of the common law, the famous Coke on Littleton, and the laws which had been enacted by the Burgesses of Virginia since 1619. . . .  
. . . . We do know that Jefferson studied the following works . . . . Harrington's *Oceana*, Sidney's *Discourses on Government*, Filmer's *Patriarcha*, Beccaria's *Crime and Punishment*.<sup>49</sup>

Unfortunately, Clarkin failed to supply supporting bibliographic citations for his authoritative prose, making it impossible to fully identify his sources. Deductive reasoning suggests that Clarkin used Jefferson's commonplace book for all of the titles. However, as noted above, the dates of Jefferson's entries spanned a wide range, only part of which would have coincided with his legal studies under Wythe. In particular, the editor of the commonplace book, Chinard, dated the Montesquieu and Beccaria entries to after 1774.<sup>50</sup> With such evidence, their place in Wythe's library remains somewhat suspect.

¶26 Dean's fourth and fifth categories contained books Wythe read and works he wrote or collaborated on, respectively. All of the titles in the latter category have already been mentioned. Of the books Wythe read, Dean derived seven from a biography of Henry Clay in which the author described Wythe's chancery decisions: "Wythe fortified legal points with Juvenal's *Satires*, Quintilian's *Rhetoric and Oratory*, and the Whig *Essays* of the great John Locke; with Rutherford on Grotius, Archimedes on mathematics, Tooke and Purley on grammar."<sup>51</sup> Additionally, Dean

45. 1 THE PAPERS OF JOHN MARSHALL 37–45 (Herbert A. Johnson et al. eds., 1974).

46. *Id.* at 40.

47. MARIE KIMBALL, JEFFERSON: THE ROAD TO GLORY, 1743–1776 (1943); NATHAN SCHACHNER, THOMAS JEFFERSON: A BIOGRAPHY (1957).

48. Alan M. Smith, Virginia Lawyers, 1680–1776: The Birth of an American Profession (1967) (unpublished Ph.D. dissertation, Johns Hopkins University) (on file at Wolf Law Library, College of William and Mary).

49. WILLIAM CLARKIN, SERENE PATRIOT: A LIFE OF GEORGE WYTHE 42 (1970).

50. COMMONPLACE BOOK OF THOMAS JEFFERSON, *supra* note 34, at 14.

51. BERNARD MAYO, HENRY CLAY: SPOKESMAN OF THE WEST 26 (1937).

added works by Homer and Euripides based on a similar discussion of Wythe's decisions in Clarkin's biography.<sup>52</sup>

¶27 Wythe's correspondence with Jefferson provided the final three titles in the section comprising books Wythe read. In a letter to Jefferson dated April 6, 1775, Wythe wrote, "I have looked cursorily over all the charters in my office. Of those sent by Mr. Montagu the three which seem to concern the matter you are considering are the same that are in the appendix to Mr. Stith's history . . ." <sup>53</sup> The editors of Jefferson's papers identified "Mr. Stith's history" as William Stith's *The History of the First Discovery and Settlement of Virginia, Being an Essay Toward a General History of This Colony*.<sup>54</sup> In another letter to Jefferson, dated July 10, 1788, Wythe referred to the deliberations of Virginia's constitutional convention.<sup>55</sup> From this reference, Dean added to her bibliography the *Journal of the Convention of Virginia*. While this work itself was not mentioned in Wythe's letter, Wythe did participate in the convention as Chairman of the Committee of the Whole, and it seems reasonable to include a copy of the *Journal* in his library. Dean found the final title in her list of books Wythe read in a letter Wythe sent on April 22, 1790: "I have not been able . . . to obtain the writings of Phlegon mentioned by Ferguson in his tables and tracts."<sup>56</sup>

¶28 The last section of Dean's bibliography enumerated standard law books of the period and derived in whole from Alan Smith's dissertation, "Virginia Lawyers 1680–1776: The Birth of an American Profession."<sup>57</sup> Dean, however, lacked proof that Wythe owned any of these works. A few of the titles have been corroborated by more recent research, but for the majority of them there is no evidence that they were owned by Wythe. Some represent additional works by authors already included in Wythe's library such as Sir Geoffrey Gilbert, Sir Matthew Hale, and Henry Homes, Lord Kames. Before we could decide to add these to the Wythe Collection several questions needed to be resolved: Did any circumstances exist in which the fame of the author, the widespread ownership of a title, or Wythe's known collection preferences would override the need for authoritative proof? Or would the absence of strong evidence automatically disqualify these titles from inclusion in Wythe's library?

### The Jefferson Inventory

¶29 Help was forthcoming in a recently published bibliography that changed the landscape of the research. Endrina Tay, a librarian at Monticello's Jefferson Library, and Jeremy Dibbell, of the Massachusetts Historical Society, published an article in January 2010 detailing their 2008 discovery of a manuscript list in the

52. CLARKIN, *supra* note 49, at 207; Dean Memorandum, *supra* note 5, at 15.

53. Letter from George Wythe to Thomas Jefferson (Apr. 6, 1775), *reprinted in* 1 THE PAPERS OF THOMAS JEFFERSON, *supra* note 36, at 163, 163.

54. *Id.* at 164.

55. Letter from George Wythe to Thomas Jefferson (July 10, 1788), *reprinted in* 13 THE PAPERS OF THOMAS JEFFERSON, *supra* note 36, at 329.

56. Letter from George Wythe to Thomas Jefferson (Apr. 22, 1790), *reprinted in* 16 THE PAPERS OF THOMAS JEFFERSON, *supra* note 36, at 368.

57. Smith, *supra* note 48.

hand of Thomas Jefferson.<sup>58</sup> Tay and Dibbell uncovered the list while examining Jefferson's "1783 Catalog."<sup>59</sup> They determined that Jefferson compiled the list to record decisions he made regarding the distribution of Wythe's library.<sup>60</sup> Jefferson's inventory consists of twelve pages—four blank and eight containing brief manuscript notations for 338 titles representing 649 volumes.<sup>61</sup> No precise bibliographic information—date, publisher, or place of publication—accompanies any of Jefferson's entries. But while the lack of detail caused problems in the effort to reconstitute Wythe's library, the inclusion of the new works more than doubled the possibilities for a Wythe Collection purchase list. The discovery of the new titles also underscored the need for our collection development plan to distinguish between varying levels of bibliographic credibility.

¶30 The contents of Jefferson's inventory provide the best evidence yet of George Wythe's wide-ranging interests.<sup>62</sup> Law reports, legislative journals, and legal treatises constitute approximately one-third of the entries. Another large portion is devoted to Greek and Roman classics of history, literature, and philosophy, with Plato, Aristotle, Homer, Herodotus, and Julius Caesar all represented. Wythe owned scientific works such as "Goldsmith's Animated Nature. 4.v. 8<sup>vo</sup>." and "Dobson's Commentary on fixed air. 8<sup>vo</sup>." He collected volumes on military engineering ("Plans of forts in America 8<sup>vo</sup>." and mathematics ("Emerson's Algebra. 8<sup>vo</sup>.").<sup>63</sup> Wythe's interests also encompassed English literature and religion—he held works by Shakespeare, John Milton, and Jonathan Swift, and collected multiple versions of the Bible in Greek, Latin, and English.

¶31 Unfortunately, Jefferson's lack of detail in listing the contents of Wythe's library means that many entries require substantiating evidence for the identification of precise titles or editions. For example, a typical entry, "Brydall's conveyancer. 8<sup>vo</sup>."<sup>64</sup> requires the researcher to examine all possible legal titles published in England or the United States before 1806 by an author named Brydall with *conveyancer* in the title and produced in an octavo (8<sup>vo</sup>.) edition.<sup>65</sup> If more than one was published in the appropriate time span, the collector would be forced to try

58. Endrina Tay & Jeremy Dibbell, *Reconstructing a Lost Library: George Wythe's "Legacie" to President Thomas Jefferson, Tales from the Vault*, COMMON-PLACE, Jan. 2010, <http://www.common-place.org/vol-10/no-02/tales>.

59. Tay and Dibble describe this as "a manuscript book catalog that Jefferson maintained from the late 1770s through 1812, now preserved in MHS's Coolidge Collection of Thomas Jefferson Manuscripts." *Id.*

60. *Id.* Jefferson gave items from Wythe's library to his nephew, Dabney Carr, Jr.; his grandson, Thomas Jefferson Randolph; his granddaughters, Anne and Ellen Randolph; his daughter, Martha Jefferson Randolph; her husband, Thomas Mann Randolph; his daughter Maria's husband, John Wayles Eppes; James Ogilvie, his grandson's tutor; and James Dinsmore, a joiner at Monticello. Jefferson also kept 155 titles for himself. The majority of the legal titles were either sent to Carr or kept by Jefferson.

61. *Id.*

62. *Jefferson's Inventory*, *supra* note 44.

63. *Id.*, at 6, 7.

64. *Id.* at 6.

65. *Octavo* refers to the size of the volume. An octavo edition is "based on a sheet folded three times, and variable in size, depending on the dimensions of the sheet on which the book is printed." JOHN CARTER & NICOLAS BARKER, *ABC FOR BOOK COLLECTORS* 155 (8th ed. 2004).

narrowing the field through further research. In this particular case, two octavo editions of a plausible book by Brydall came to light: John Brydall's *Ars transferendi dominium: or, A Sure Law-Guide to the Conveyancer*, published in London in 1697 and 1702. The existence of Wythe's bookplate in a 1697 copy owned by the University of Virginia answered the question of which edition Jefferson received from Wythe.

¶32 Deciphering other titles from the Jefferson inventory is more complicated. In fact, many of Jefferson's descriptions are cryptic in their brevity and defy recognition. A particularly intriguing but vague example is "Grotius."<sup>66</sup> Multiple contenders could be described by this modest entry and little recommends one over another.<sup>67</sup> Some help came from Jeremy Dibbell, who made an attempt to identify every title in Jefferson's inventory in an extensively annotated version on *LibraryThing*.<sup>68</sup> Where possible, Dibbell indicated all publication and edition information. When guesswork entered the equation, Dibbell clearly noted which items could not be specifically identified. For example, Dibbell recorded the entry "juris civilis. fol." and noted, "Precise work/edition unknown. Possibly an edition of Denis Godefroy's *Corpus Juris Civilis*."<sup>69</sup>

¶33 To translate Jefferson's notations into titles and editions, Dibbell presumably relied upon Sowerby, WorldCat, and the *English Short-Title Catalog*.<sup>70</sup> It also appears that he consulted Jefferson's correspondence, various auction records, and Thomas Mann Randolph's probate inventory.<sup>71</sup> Unfortunately, perhaps due to the nature of *LibraryThing*, the only information regarding the resources for the list appears on the profile page: "This LT catalog has been created using Jefferson's list of Wythe books, with additional books drawn from other Wythe correspondence, invoices and orders."<sup>72</sup> The lack of more specific documentation obviously raised a crucial question for the Wythe Collection: would the library need to re-create Dibbell's research or otherwise validate his determinations in order to include the titles from the *LibraryThing* bibliography?

66. *Jefferson's Inventory*, *supra* note 44, at 2.

67. I performed an advanced WorldCat search for works by Grotius on April 2, 2010, using the following parameters: **author = Grotius, publication date = -1806, format = book, material = not microform**. The search resulted in 4417 records. A similar search in the *English Short-Title Catalog* on Feb. 26, 2012—**word(s) from author = Grotius**—revealed 152 titles.

68. *Member: GeorgeWythe*, LIBRARYTHING, <http://www.librarything.com/profile/GeorgeWythe> (last visited Nov. 1, 2012) (click on link to "Your library" for listing of books). "LibraryThing is a cataloging and social networking site for book lovers. LibraryThing helps you create a library-quality catalog of books: books you own, books you've read, books you'd like to read, books you've lent out . . . whatever grouping you'd like." *What Is LibraryThing?*, LIBRARYTHING, <http://www.librarything.com/tour/> (last visited Nov. 1, 2012).

69. *Member: GeorgeWythe*, LIBRARYTHING, <http://www.librarything.com/catalog/GeorgeWythe> (last visited Nov. 1, 2012) (search for "juris civilis" and click on style B or C to see comments).

70. ESTC: ENGLISH SHORT-TITLE CATALOG, <http://estc.ucr.edu> (last updated Sept. 16, 2010). According to the ESTC web site:

The English Short-Title Catalog (ESTC) is a vast database designed to include a bibliographic record, with holdings, of every surviving copy of letterpress produced in Great Britain or any of its dependencies, in any language, worldwide, from 1473–1800. In order to increase access to these items, we include references to microfilm, digital, and other facsimile versions.

71. See Tay & Dibbell, *supra* note 58.

72. *Member: GeorgeWythe*, *supra* note 68.

### Brown's Bibliography

¶34 The last bibliography the Wythe Collection research project uncovered was the unpublished 2009 manuscript by Bennie Brown of the Bookpress, Ltd., an antiquarian bookshop in Williamsburg, Virginia.<sup>73</sup> Brown's bibliography combined the earlier research of Goodwin, Dean, and Tay and Dibbell with extensive annotations. Unlike Dean and Goodwin, Brown created no subcategories for the four hundred and sixty-six entries on his list. Titles are arranged alphabetically by author. Rather than relying upon only one source for each title, Brown's information incorporated all known sources for a particular title. For example, his entry for the *Reports of Cases Adjudged in the Court of King's Bench* by James Burrow enumerated six different sources, including Wythe's letter cited above, his advertisement in the *Virginia Gazette*, the entry from the Jefferson inventory, and a reference in John Marshall's *Law Notes*. Brown identified at least fifty titles not included in earlier bibliographies or in the Jefferson inventory, resulting from his search through the original documents cited in the other bibliographies as well as his analysis of Wythe's case reports. Brown's knowledge of antiquarian books and the availability of computerized resources also played a part in the creation of his expanded list.

¶35 Brown found many new titles by revisiting the papers of Wythe's students. By examining the manuscript copy of John Marshall's law notes<sup>74</sup> instead of relying upon the published extract included in *The Papers of John Marshall*,<sup>75</sup> Brown discovered eighteen additional titles Marshall used during his studies at William and Mary. These new titles included twelve collections of case reports and six treatises such as George Booth's *The Nature and Practice of Real Actions* and Sir Geoffrey Gilbert's *The Law of Evidence*. Similarly, Brown found eight extra titles by returning to Jefferson's correspondence, his commonplace book, and his more recently published literary commonplace book.<sup>76</sup>

¶36 Perhaps most interestingly for the purposes of understanding Wythe's usage of his library, Brown scoured Wythe's writings to unveil the sources Wythe referenced in his case reports. The majority of Brown's notes from Wythe's cases corroborate previously known titles, but Brown did uncover seven new titles, including Jean Domat's *The Civil Law in its Natural Order*, Henry Blackstone's *Reports of Cases Argued and Determined in the Courts of Common Pleas and Exchequer Chamber*, and Miguel de Cervantes's *Don Quixote*.

¶37 Brown further expanded his bibliography by visiting various libraries in the Commonwealth of Virginia and locating a few more of Wythe's extant books in

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73. Bennie Brown, *The Library of George Wythe of Williamsburg and Richmond* (unpublished manuscript, 2009), available at <https://digitalarchive.wm.edu/handle/10288/13433>. The 2009 list included 419 titles. Brown's research between 2009 and 2011 yielded another forty-seven titles. Bennie Brown, *The Library of George Wythe* (unpublished manuscript, n.d. [2011?]) (on file at Wolf Law Library, College of William and Mary).

74. John Marshall Papers, Law Notes Manuscript volume with typescript (on file at Earl Gregg Swem Library, College of William and Mary).

75. 1 PAPERS OF JOHN MARSHALL, *supra* note 45, at 40 ("The extract printed here covers approximately one-fourth of the text of the law notes, from the beginning of the manuscript to the end of the topic 'Condition.'").

76. JEFFERSON'S LITERARY COMMONPLACE BOOK (Douglas L. Wilson ed., 1989).



their special collections. He also found a title, John Locke's *An Essay Concerning Human Understanding*, in the personal collection of bookseller William Reese,<sup>77</sup> and discovered Wythe's name in the subscriber lists for a couple of titles, including William Waller Hening's *The New Virginia Justice*. Other titles new to the list include eighteenth-century newspapers from Richmond and Williamsburg.

### Revising the Collection Development Policy

¶38 Armed with the information gathered from the four bibliographies and their sources, I undertook a revision of the development policy for the Wolf Law Library's George Wythe Collection. Combining the sources yielded a total of nearly 500 titles covering a wide array of subjects. After thoughtful deliberation, I settled on three subject categories: (1) law (treatises, reporters, and legislative journals); (2) political science, history, and philosophy; and (3) religion, literature, and science. For purchasing purposes, the library gives priority to the legal titles and those in the political science, history, and philosophy section as those most closely supporting a curriculum of "law and police." However, as Brown's research demonstrates, Wythe frequently laced his legal opinions with quotes from works of literature, science, and religion, which allows for the occasional purchase of items from that category.

¶39 Within each of the categories, titles are divided by a system analogous to the burden of proof required in civil and criminal trials. The "beyond a reasonable doubt" titles—where Wythe's actual books still exist—form the section with the greatest desirability. A second tier of books—the ones for which the documentary evidence of Wythe's ownership is conclusive or "clear and convincing"—includes those volumes to which Wythe subscribed and the few titles precisely identified in newspapers or auction records. Items meeting a "preponderance of the evidence" standard that indicate Wythe ownership follow next in a third tier. These derive from the notes and records of Wythe's students and have some measure of specificity as to edition and title. A fourth tier consists of those titles with "some credible evidence"; these include entries from Jefferson's inventory for which precise edition and title information is lacking. Finally, the last tier contains titles that do not meet the burden of proof—Dean's section of legal works, "Books Representative of Wythe's Time"; and later titles from Jefferson's commonplace book that could not be verified by present research.

¶40 The new development plan was written in June 2010.<sup>78</sup> Recent additions address policies for titles quoted by Wythe in his case reports and books representative of eighteenth-century law libraries. The plan attempts to address questions raised by the examination of the four bibliographies and, in combination with an extensive spreadsheet of the titles and categories, provides the library with the tools necessary to re-create George Wythe's library.

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77. Reese's copy has Wythe's signature on the title page.

78. This development plan, which is included *infra* as the appendix, originated as an assignment for the Rare Book School course, Law Books: History and Connoisseurship, in June 2010. My thanks go to Michael Widener for his excellent suggestions and guidance.

¶41 After ninety-seven purchases (since 2009) and the transfer of forty-six titles from the existing rare book collection after the discovery of Jefferson's inventory, the Wythe Collection at the Wolf Law Library now contains 174 titles. The library counts among its Wythe treasures Sir Robert Brooke's *La Graunde Abridgment*; *The Works of John Locke*; and a first edition, first impression of John Marshall's *Life of George Washington*. Additionally, a recent agreement with the Earl Gregg Swem Library—the main library at the College of William and Mary—transferred on permanent loan three of Wythe's actual books: volume 6 of *The Reports of Sir Edward Coke* (with Wythe's bookplate); Hugh Blair's *Lectures on Rhetoric and Belles Lettres* (inscribed to Wythe from Thomas Lee Shippen); and *The Proceedings of the Convention of Delegates and Corporations in the Colony of Virginia, July, 1775* (with Wythe's signature on the title page). Development of the collection proceeds as funds allow, and a newly cleaned, early twentieth century painting of George Wythe now presides over an expanded display of his re-created library in the law library's Nicholas St. George Rare Book Room. A new project inspired by the *Thomas Jefferson's Library* exhibit at the Library of Congress<sup>79</sup> is in the initial stages of exploration. If successful, the project will create a separate display room and permanent exhibit devoted to George Wythe, his teaching career, and the books within his library.

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79. *Thomas Jefferson's Library*, LIBRARY OF CONG., <http://myloc.gov/Exhibitions/jeffersonslibrary/Pages/default.aspx> (last visited Dec. 2, 2012).

## Appendix

### Development Plan for The George Wythe Collection The Wolf Law Library College of William and Mary

The Wolf Law Library's main collecting goal in regard to rare materials focuses on replicating the library of William and Mary professor George Wythe (1726–1806), the first law professor in the nation. Wythe assembled one of the most important libraries in eighteenth-century Virginia. Its impressive array of Western classics, history, philosophy, and law had a direct impact on the development of Virginia law and the law of the new nation.

The George Wythe Collection focuses on items of a legal nature; however, the library also actively collects Wythe's holdings in history, philosophy, and political science. The chancellor's entire library consisted of approximately 470 titles. Roughly half of those titles fall outside the primary goals of our collection, but they may be considered in special circumstances.

#### Collection Priorities

1. *Titles showing a definite connection to George Wythe:* The library makes every attempt to duplicate the exact edition and impression of all items with a proven connection to Wythe. This group includes titles written by Wythe; those he collaborated upon; volumes known to possess Wythe's signature, his armorial bookplate, or inscribed notes attributed to him; and those works that include Wythe's name among the published list of subscribers. References for the identification of these titles include
  - a. Mary Goodwin, *The George Wythe House: Its Furniture and Furnishings* (Williamsburg, Va.: Colonial Williamsburg Foundation Library, 1958)
  - b. Barbara C. Dean, *Memo to Mrs. Stiverson* (internal Colonial Williamsburg memo dated June 16, 1975)
  - c. Bennie Brown, *The Library of George Wythe of Williamsburg and Richmond* (Williamsburg, Va., unpublished manuscript, 2011)
  - d. E. Millicent Sowerby, comp., *Catalogue of the Library of Thomas Jefferson* (Charlottesville: University Press of Virginia, 1983)
2. *Titles identified in Jefferson's manuscript list:* The library collects all titles identified by Thomas Jefferson's manuscript list detailing his dispersal of George Wythe's library. Where the specific edition Wythe owned is unknown, the library limits consideration to those works published before Wythe's death in 1806 and prefers those titles/editions known to have been owned by Jefferson (see Sowerby) or the recipient he listed. If no specific edition/title information exists for these copies, the library prefers those editions/titles identified in contemporary Virginia libraries. When none of these options identifies an edition or title, the library will collect the most valuable edition of a given work that might have been part of the chancellor's collection. References for the identification of titles in this category include those listed above as well as

- a. Frances Norton Mason, ed., *John Norton & Sons, Merchants of London and Virginia, Being the Papers from Their Counting Houses for the Years 1750 to 1795* (Richmond, Va.: The Dietz Press, 1937)
  - b. "Library of George Wythe," *Thomas Jefferson Libraries*, <http://tjlibraries.monticello.org/transcripts/wythelibrary/2.html> (last visited March 15, 2010)
3. *Titles noted in the commonplace books or other writings of Wythe's students:* The library collects those titles specifically noted by Wythe's students in existing papers and commonplace books that do not fall into categories 1 or 2. If the student note postdates that student's educational association with Wythe, every attempt will be made to verify the title through other resources. Reference works for these titles (in addition to those above) include
- a. Herbert A. Johnson et al., eds., *The Papers of John Marshall* (Chapel Hill: University of North Carolina Press, 1974–2006)
  - b. Gilbert Chinard, ed., *The Commonplace Book of Thomas Jefferson: A Repertory of His Ideas on Government* (Baltimore: The Johns Hopkins Press, 1926)
4. *Titles quoted or mentioned in Wythe's case reports:* The library collects those titles to which the chancellor refers or alludes in his published case reports if the titles do not fall into categories 1, 2, or 3. Reference works for these titles include
- a. George Wythe, *Between, Joseph Wilkins, Administrator of His Late Defunct Wife Sarah, One of the Grandaughters [sic] and Legataries of Thomas Williamson, and Widow, When She Was Married Last of Hartwell Cocke, Plaintiff, and, John Taylor, and William Urquhart, Executors of the Said Thomas Williamson, Defendants [sic]* (Richmond, Va.: Printed by Thomas Nicolson, 1796)
  - b. George Wythe, *Between William Yates and Sarah his wife, Plaintiffs, and Abraham Salle, Bernard Markham, Edward Moseley, Benjamin Harris, and William Wager Harris, Defendants [sic]* (Richmond, Va.: Printed by Thomas Nicolson, 1796)
  - c. George Wythe, *Case upon the Statute for Distribution* (Richmond, Va.: Printed by Thomas Nicolson, 1796)
  - d. George Wythe, *Love Against Donelson and Hodgson* (Richmond, Va.: Printed by Thomas Nicolson, 1796)
  - e. George Wythe, *A Report of the Case Between Field and Harrison, Determined by the High Court of Chancery, in Which the Decree was Reversed by the Court of Appeals* (Richmond, Va.: Printed by Thomas Nicolson, 1796)
  - f. George Wythe, *Between, William Fowler and Susanna his Wife, Plaintiffs, and, Lucy Saunders, an Infant, by James A. Patterson, Her Guardian, Defendant [sic]. Between Parke Goodall and John Clough, Plaintiffs, and, John Bullock, the Younger, Defendant [sic]* (Richmond, Va.: Printed by Thomas Nicolson, 1798)

- g. George Wythe, *Decisions of Cases in Virginia, by the High Court of Chancery* (Richmond, Va.: Printed by Thomas Nicolson, 1795)
5. *Titles representative of Wythe's time*: The library collects titles represented in law libraries of the eighteenth century if those titles do not fall in the above categories. Reference works for these titles include
- a. William Hamilton Bryson, *Census of Law Books in Colonial Virginia* (Charlottesville: University Press of Virginia, 1978)
  - b. Eldon Revare James, "A List of Legal Treatises Printed in the British Colonies and the American States Before 1801," in *Harvard Legal Essays* (Cambridge, Mass.: Harvard University Press, 1934) (pp. 159–211)
  - c. Herbert A. Johnson, *Imported Eighteenth-Century Law Treatises in American Libraries, 1700–1799* (Knoxville: University of Tennessee Press, 1978)
  - d. Alan McKinley Smith, *Virginia Lawyers, 1680–1776: The Birth of an American Profession* (unpublished Ph.D. dissertation, Johns Hopkins University, 1967)

### Supporting Materials

The library collects all available scholarly materials relating to George Wythe including books, manuscripts, dissertations, theses, and articles. The library supplements this by also collecting items of Colonial or Revolutionary Virginia history, biographies of Wythe's major students (Thomas Jefferson, John Marshall, James Monroe, and Henry Clay), and supporting reference works in the history of American law.

### Availability of Materials

The library has distributed a list of titles to a small number of rare book dealers specializing in either law books or Virginia materials. Many items are available on the market, while others are considered extremely difficult to locate.

### Level of Funding

Currently, the library has no specific funds to devote to purchasing the items on the Wythe Collection list. Suitable donors need to be identified in consultation with the dean of the Law School and our development office.

### Use of the Collection

The intention of the Wolf Law Library in creating the George Wythe Collection is to highlight the early development of legal education at the College of William and Mary and provide an exhaustive collection for research in this field. Collection materials will be made available to all scholars and visitors under appropriate supervision. New items will be regularly displayed in the Rare Book Room and featured in the rare book section of the law library's web site. A soon-to-be-created display for the staircase lounge will also draw patrons to visit the collection, and a

program of tours for alumni, students, and friends will focus on the growth of the collection. The library plans to create a brochure featuring the collection, its goals, and a short biography of George Wythe.