Lawyers and Law Books in Nineteenth-Century Kansas

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Every profession has its tools. Surgeons need scalpels, surveyors need theodolites and other surveying instruments, and lawyers need books. Since the beginnings of the legal profession in ancient Rome, wherever there have been lawyers there have been books.1 From the very earliest territorial days Kansas attracted members of the legal profession.2 The first city directories of Kansas towns reveal a significant presence of lawyers. In Lawrence, part of the main street through town, Massachusetts Street, was taken over by lawyers.3 Much the same was true in Wichita, Lecompton, and, of course, Leavenworth.4 Lawyers performed a wide range of tasks. They tried cases; they wrote wills; they acted as land agents. A few became journalists. But whatever areas they chose to follow, they needed law books: reporters, treatises, and statute books. In time, some could rely upon institutional libraries, like the Leavenworth Law Library Association, county law libraries, and, eventu-

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2. Too little has been written on the history of the legal profession in Kansas; see, however, The Law and Lawyers in Kansas History (Virgil Dean, ed. 1992) (a collection of eight papers published by the Kansas State Historical Society, Topeka, Kan.); Requisite Learning and Good Moral Character: A History of the Kansas Bench and Bar (Robert W. Richmond, ed. 1982) (a collection of ten papers published by the Kansas Bar Association, Topeka, Kan.). Especially important are the various essays of the late Professor Paul Wilson, many of which are collected in Paul Wilson, Musings of a Smiling Bull: Selected Essays, Articles and Speeches (2000) (published by the University of Kansas School of Law, Lawrence, Kan.) [hereinafter Wilson, Musings]. Of Professor Wilson’s works on Kansas legal history, the most significant are Paul Wilson, The Early Years: The Bench and Bar Before 1882, in Requisite Learning and Good Moral Character, supra, at 27–41 [hereinafter Wilson, The Early Years]; and Paul Wilson, How the Law Came to Kansas, in Wilson, Musings, supra at 77–104.
ally, the law libraries at Washburn and at the University of Kansas. Other lawyers were able to purchase law books and accumulate their own law libraries over the course of their careers. Private acquisitions were not common, however. One Eastern bookseller in 1855 estimated that a good private law library could cost its owner $1000, a cost far beyond the realm of possibility for most lawyers, especially on the frontier. Nevertheless, even some frontier lawyers owned their own libraries. In this brief Essay we will explore several topics in the early history of the Kansas Bar: the earliest private law libraries, the beginnings of law book publishing and selling in Kansas, the earliest and most important law books published and printed for the Kansas Bar, and the early history of the Leavenworth Law Library Association.

I. PRIVATE LAW LIBRARIES IN TERRITORIAL KANSAS

When Kansas was first settled in the 1850s, lawyers were amongst the first settlers. Leavenworth, Lecompton, and Lawrence all had substantial Bar membership. In 1862, Elliot Banks, an émigré to Lawrence from New York, wrote to a friend back home of the thriving Bar there. Indeed, by the 1860s there was evidence that competition among lawyers was intense. By 1866 the Lawrence City Directory listed twenty-three practicing lawyers in its business section. Several of these had been settled in Lawrence since the town's founding.

One of the myths of territorial Kansas (and, indeed, of the Western frontier as a whole) is that it was a rough and tumble, unlettered region with gunfights common in the streets and hard men congregating in saloons. According to these myths, traces of a more polite and cultured civilization were few and far between. Certainly, few historians have


7. Lawrence City Directory and Business Guide for 1866 at 85 (Lawrence, Kan., Boughton and Mcallister 1866) (photo reprint, n.d.) (on file with the Douglas County Historical Society, Lawrence, Kan.).


9. Id. at 4–5.
attempted to look at the reading habits of the territorial population.\textsuperscript{10} Yet, it is possible, to some extent, to do this for territorial Kansas because of the "troubles" that plagued Kansas and Kansans, including the depredations of John Brown and his band in eastern Kansas.\textsuperscript{11} Brown was a radical abolitionist who led a series of armed raids throughout the region. His raids were countered by the resident force of federal soldiers. The results of raid and counter-raid in this region during this period were devastating in terms both of the loss of life and, especially, of property. In 1857 the Territorial Legislature passed legislation asking the United States Congress to authorize reparations for those territorial Kansans who could prove that they had suffered property losses as a result of this fighting. Private citizens who could show that they had "sustained any loss or damage in consequence of, or growing out of, the difficulties" in the territory were permitted to make a claim.\textsuperscript{12} A Commissioner for Auditing Claims, H.J. Strickler, was appointed. In order to determine the amounts to be paid, Strickler held what was, in effect, a form of inquest throughout the affected area. Those who believed that they were entitled to reparations were required to file a claim and to prove this claim through evidence given by two eyewitnesses. The report of these claims was subsequently submitted to Congress in the hope that Congress would pass legislation to pay them. This report was printed as a Congressional Miscellaneous Document in 1859, informally known as the \textit{Strickler Report}.\textsuperscript{13}

This congressional publication provides an exceptional window into the material culture of the Kansas Territory. Claimants provided detailed lists of their property losses. We find among the various claims made such things as barrels of oysters, rifles, jugs of bourbon liquor, and quilts. Included amongst these claimed losses were also a surprising number of claims for lost books. Among these latter claims were losses of medical books, of Sunday school texts, of novels, and in three cases

\textsuperscript{10} One notable exception is Calvin W. Gower, \textit{Lectures, Lyceums, and Libraries in early Kansas}, 1854-1864, 36 \textit{KAN. HIST. Q} 175 (1970).
\textsuperscript{11} One article on Bleeding Kansas that will point the reader to a number of additional materials on the subject is Gunja SenGupta, \textit{Bleeding Kansas}, 24 \textit{KAN. HIST.} 318 (2001).
\textsuperscript{12} H.J. STRICKLER, CLAIMS OF THE CITIZENS OF THE TERRITORY OF KANSAS, H.R. MISC. DOC. NO. 43, at 1 (report to the 35th Cong. 2d Sess.) [hereinafter STRICKLER REPORT].
\textsuperscript{13} A copy of the \textit{Strickler Report} is owned by the Kansas State Historical Society in Topeka, Kansas. For a general history of this report, see William Hutchinson, \textit{Claims for Losses of Kansas Settlers During the Troubles of 1855 and 1856, in 6 TRANSACTIONS KAN. STATE HIST. SOC’Y,} 1897-1900, 360 (Geo. W. Martin, ed. 1900) (published by W.Y. Morgan, State Printer, in Topeka, Kan.).
of claims put forward by lawyers there is evidence of private law libraries including lost law books.

Of the approximately 300 claims contained in the Strickler Report there were twenty-five claims for lost books. Thus, roughly eight percent of those who made claims for property losses had owned books of sufficient value to warrant making a claim. The value of the claims ranged from a high of $1000 made by Albert Searl, who was the first City Engineer of Lawrence, for the loss of “[b]ooks, maps, surveys, and valuable papers” to a low of $1.50 made by John Carr of Lykins County14 for the loss of what is identified simply as “[o]ne book.”15 Ten of the claims were for an amount of $100 or more. If one assumes that the average book cost between fifty cents and three dollars, then these ten individual claimants possessed substantial libraries, particularly for a frontier region.16

Three of the claimants, as noted above, were lawyers. John Hutchinson, who identified himself as a resident of Douglas County, proved a claim for a loss of $100 worth of books.17 Hutchinson, in fact, was a prominent citizen of Lawrence.18 He was a member of the second emigrant group to come to Lawrence and served as a Lawrence city councilman. He was also one of the first lawyers in Lawrence. In his claim, Hutchinson did not identify whether the books which he had lost were specifically law books or books of a more general character. We may well speculate, however, that some, at least, were legal.

Charles Crane, a lawyer in Ossawatomie in Lykins County, put in an exceptionally interesting claim. He did not claim damages for the loss of books. Rather, he asked for eleven dollars reimbursement for the cost of transporting his law library to safety in Kansas City.19 The claim specifies that the books moved were law books so that there can be no doubt that these were a working lawyer’s professional texts. Apparently, fearful that his books might be destroyed, he had them moved out of

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14. Lykins County is now Miami County.
16. This estimate is based upon a survey of book prices as published in various booksellers’ catalogues. E.g., Little, Brown, Catalogue of Law Books (Boston, Mass. 1856).
17. See Strickler Report, supra note 12, at 116–17 (reprinting a detailed affidavit from Hutchinson).
the affected area prior to Brown’s raids. The fact that he had to pay someone to ship these books at the cost of eleven dollars suggests that there were a substantial number of books in the lot transported.

The third claimant is, in many ways, the most interesting. James S. Emery was also one of the second group of emigrants which founded Lawrence.20 He served the city and state in a number of capacities during his career and was one of its most respected citizens. Emery was born in Maine in July 1832, so that at the time of the Brown raids he was still quite a young man. He attended Colby College in Maine, from which he graduated in 1851. After graduation he moved to Troy, New York, a prosperous upstate town where he was apprenticed to study law. He was admitted to the New York Bar in January 1853 when he was twenty-one years old. Two years later he was in Kansas. He went on to have a distinguished career at the Kansas Bar, and he served as the United States Attorney for Kansas from 1863 until 1867 as an appointee of President Lincoln.

James Emery was one of the claimants listed in the 1859 Congressional Report.21 He testifies that on May 21, 1856, his goods were seized by unknown men claiming to be members of the “territorial militia.” Amongst the specific goods taken, Emery listed seventy-five volumes of “law and miscellaneous books” with a value of $475 (he also lost a “dressing case” valued at $25). Two witnesses testified to the truth of his claims as required, and Strickler, as Commissioner, found that his claims were true and allowed the full amount.

Emery’s claim for “law and miscellaneous” books is quite significant on a number of grounds. First, he gives the number of volumes he lost. If we assume that he lost his whole library, we know that his library was of a reasonable size. Second, we also get some idea of the value of the books. The average value of Emery’s books as found by the Commissioner was approximately six dollars per volume. Indeed, we may surmise that some of the law books, for instance, the treatises he is likely to have had, would have been of greater value. Certainly, a law library of this size and value (even assuming that some of the books were non-legal) would have been a respectable library for any lawyer in the United States and certainly for a lawyer only twenty-four years old and practicing on the Kansas frontier.

20. James S. Emery [obituary], 6 TRANSACTIONS KAN. STATE HIST. SOC’Y 223 (1900); see also WILLIAM E. CONNELLEY, A STANDARD HISTORY OF KANSAS AND KANSANS (1918).
Of course, the information we can gain from studying the Strickler Report is interesting; but it is also obviously incomplete. We know that the earliest lawyers in Kansas had libraries comprised at least partly of law books. These were of considerable value. We do not know what books they actually owned; however, we can make some informed guesses. We know, for instance, that they did not own Kansas reports or treatises specifically on Kansas law, for such books simply did not exist at this time. We also know that they did not own many law books printed in Kansas, for, other than legislative materials, these did not yet exist either.

What they probably owned was a collection of general treatises on law as well as law reports and statute books from other states. It seems likely, for instance, that they would have had some Missouri law texts.\textsuperscript{22} We know, for instance, that the pro-slavery forces at the time used Missouri statutes and cases as the basis for their versions of Kansas laws. Probably, the Free State contingent had reports of cases from Massachusetts, New York, or other Eastern states, as these were the states of origin and training of many of the emigrants. It seems highly probable that the Free State settlers brought many of these books with them on their overland trip to Kansas or had them shipped after they had arrived.\textsuperscript{23} Again, we may look at James Emery as an example. At the time of his loss he had been in Lawrence only a short time. He had been admitted to the New York Bar only three years before and had been trained in New York. There can be little doubt that most of the law books among the seventy-five he lost in 1856 were books that he had acquired in New York during his training there and brought to Kansas.

Among the treatises we may imagine that they had the most likely, of course, would have been American reprints of Blackstone’s Commentaries on English Law and Kent’s Commentaries on American Law.\textsuperscript{24}

\textsuperscript{22} See Wilson, The Early Years, supra note 2, at 35 (citing Judge Samuel Lecompte’s reliance on the Missouri Reports). Additionally, the 1855 Kansas statutes, sometimes called the “bogus Statutes,” are annotated with citations to Missouri cases. Statutes of the Territory of Kansas; Passed at the First Session of the Legislative Assembly (Shawnee Mission, Kan., John T. Brady, Public Printer 1855) (published at the Shawnee Manual Labor School) [hereinafter 1855 Statutes].

\textsuperscript{23} Wilson, The Early Years, supra note 2, at 36.

\textsuperscript{24} Blackstone’s Commentaries were originally published in 1765. Early Kansas lawyers likely had access to an edition of Blackstone edited by Edward Christian, Joseph Chitty, and others. William Blackstone, Commentaries on the Laws of England: In Four Books, with an Analysis of the Work (Edward Christian et al., eds., Philadelphia, J.B. Lippincott Co., 1832). This edition, commonly called Chitty’s Blackstone, was republished numerous times from 1832 into the twentieth century. By the 1870s, Kansas lawyers had access to additional American editions of Blackstone. William Blackstone, Commentaries on the Laws of England: In Four Books
These were the mainstays of mid-nineteenth-century legal education both in the East and on the frontier. It is also quite likely that these early Kansas lawyers had some volumes of federal statutes and cases, since Kansas in this period was a federal territory. Finally, they may well have owned a few legal periodicals, such as *Livingston’s Monthly Law Magazine*, which were available nationally by subscription through the mails.25

Even though we do not know with any certainty what law books lawyers such as Hutchinson, Emery, and Crane possessed in 1855 Kansas, it is quite significant historically to know that they possessed private law libraries of any sort at all. There is a tendency to believe that the courts and lawyers of territorial Kansas dispensed a rough, unlettered type of justice, untroubled by legal learning or literature. Indeed, the model for most historical accounts of frontier lawyering is the myth of Abraham Lincoln, who was also spoken of as unlearned in the law and whose success at the Bar was a result of his homespun oratory. Lincoln did own a number of law books.26 Further, the lawyers of early Kansas were not, like Lincoln, trained on the frontier. Instead, they were emigrant lawyers, trained in the East in the traditional ways and exposed to Eastern legal practice. They may not have had the Harvard Law Library at their disposal in places like Lawrence, Kansas, but they certainly did have law books, as the *Strickler Report* indicates. Further, as Charles Crane’s evidence makes abundantly clear, they valued these law books, valued them enough, in Crane’s case, to spend a considerable amount of money to have them transported to safety.

II. **EARLY KANSAS LEGAL PRINTING AND KANSAS’ FIRST LAW BOOKSELLER AND PUBLISHER**

There are at least two contenders to be the earliest legal item printed in Kansas, although the actual first printing remains shrouded in the mists of time. The first possibility for being the earliest example of spe-

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26. Lincoln possessed a fairly sophisticated collection of law books. Many of these are now preserved in the collection of the Illinois State Historical Society in Springfield, Illinois. A number of the volumes are still kept in Lincoln’s desk in the Historical Society’s headquarters in the Old State Capitol building in Springfield.
cialized legal printing would seem to be a one page blank form catalogued in the Kansas State Historical Society Library in Topeka. The Society Library's catalogue has the following listing:

Blank form, writ of replevin, Kansas Territory,
Printed at the Herald of Freedom Office ... 1p.27

The *Herald of Freedom* was one of the first newspapers published in Lawrence and was in business from 1854 until 1859.28 Thus, although there is no specific date given on the form, we know that it must have been printed during this period. We also know that it was not uncommon for nineteenth-century newspapers to earn extra revenues by doing job printing, which is likely how this form came to be printed by the *Herald*.

The existence of this form is noteworthy on several counts. First, it may well be the earliest example of legal printing actually done in Kansas. Second, the fact that this was a blank form would indicate that it was printed for sale to lawyers and others who would then use it by filling in the blanks as the individual case required. That it was a writ of replevin is also quite significant. Replevin was the old common law action for return of chattels (i.e., personal property) which had been seized by a creditor, often as a result of unpaid rent.29 We may imagine that in Kansas during the 1850s this action may well have been used in those cases where debts had been secured by property which was then seized by the creditor and which the debtor wished to regain. The existence of this blank form for replevin may well indicate that such actions were commonplace at this time in Kansas.

The second possibility is a legislative item, the *Statutes of the Territory of Kansas; Passed at the First Session of the Legislative Assembly*, which was printed at the Shawnee Mission and carries a date of 1855.30 That a territorial legislative enactment should be among one of the earliest printed legal items in Kansas is not terribly surprising, but it is very interesting that the item was printed at Shawnee Mission at so early a date.

27. This description is taken from the catalogue of Kansas material at the Kansas State Historical Society in Topeka, Kansas. Unfortunately, we have been unable to see the form itself, which appears to have been misplaced.


29. DAVID M. WALKER, OXFORD COMPANION TO LAW 1059 (1980).

30. 1855 STATUTES, supra note 22. See infra notes 43 to 50 and accompanying text for additional discussion of the first Kansas statutes.
Certainly, during the first years of the Kansas Territory and over the following early years of statehood, other legal and quasi-legal documents were printed in Kansas. Many of these would have been either legal forms, case reports, or legislative texts rather than treatise literature. Two of the most interesting legal items printed in the early years, already discussed in an earlier article, were the fee schedules printed in 1869 for the Douglas County Bar and in 1872 for the Wichita County Bar. These too, were single sheets printed by local newspaper printing offices. It was not until the 1870s, however, that Kansas legal printing and book-selling became established in a true sense. It was during this later decade that the first Kansas treatises were printed in the State and that the first private law publisher and book-seller began operations in Topeka.

Crane & Company, booksellers and publishers of Topeka, Kansas was one of the first publishers in the State of Kansas. Today it is remembered not for the short-lived Kansas Law Journal, but rather as a publisher of schoolbooks and as the printer of Kansas’ poet laureate at the turn of the twentieth century, Eugene Ware, known by the pen name “Ironquill.” Crane & Company was also the first serious law bookseller in Kansas. George W. Crane, the company’s founder, was born in 1843 and died in 1913. His father, F.L. Crane, was one of the founding fathers of Topeka. G.W., as he was known, became a printer, a bookbinder, a bookseller, and a publisher; he specialized in school textbooks and, eventually, law books and legal supplies. His company issued the first catalogue of law books for sale in the State of Kansas in about 1886, a copy of which is now in the collections of the Kansas State Historical Society. It is only thirteen pages in duodecimo, a far cry from the catalogues issued back east by Little, Brown of Boston or F.H. Thomas of St. Louis, but a Kansas lawyer could buy everything he

31. These are printed as an appendix in Hoeflich, Legal Fees, supra note 3, at 1002–03.
32. The Kansas Law Journal: A Weekly Record of the Law and Lawyers of Kansas was published by Crane & Company from 1885–1887.
34. For information on the Cranes and Crane & Company, see DOUGLAS W. WALLACE & ROY D. BIRD, WITNESS OF THE TIMES: A HISTORY OF SHAWNEE COUNTY 207, 238, 242, 317 (1976) (published as Bulletin No. 53 by the Shawnee County Historical Society, Topeka, Kan.).
35. BRIEF LAW CATALOGUE OF GEO. W. CRANE & CO., BLANK BOOK MANUFACTURERS, PRINTERS AND BINDERS, LAW BOOK PUBLISHERS AND DEALERS (Topeka, Kan., G.W. Crane & Co. n.d.) (believed to be published in 1886) [hereinafter CRANE CATALOGUE]. A photocopy of the catalog is in the possession of the authors, and an original copy is owned by the Kansas State Historical Society. The Historical Society also has a copy of the second edition of this catalogue.
needed from Crane & Company in the way of books and stationary—from the *Kansas Reports* to the latest treatise literature to law blanks and forms. Crane's business was aimed specifically at Kansas lawyers, and the first page of the catalogue lists (apart from the *Kansas Reports* and *Session Laws*) fifteen texts on Kansas law. If a lawyer of the time had purchased all fifteen he could have done so for a total of $89.50, a significant sum for a beginning practitioner. But for this sum, the purchaser would have received such notable tomes as Dassler's *Digest of Supreme Court Decisions* and Spalding's *Executor's and Administrator's Manual*.36

But G.W. Crane was not satisfied simply with publishing and selling books about Kansas law. He understood that even frontier lawyers needed other texts. His catalogue could not list many of these. For his clients who were not satisfied with what he had in stock, he also stated, "We are in almost daily correspondence with the principal publishing houses east, and can promptly furnish any book which is not on our shelves at the moment called for."37 Nevertheless, the majority of the books listed for sale in the Crane & Company law catalogue were books about the law in general published far from Kansas.

The catalogue lists available law books under sixty-eight categories, including such topics as contracts, mortgages, common carriers, and business. It lists one hundred and fifty-nine individual titles. Most of the books would have been available in cloth or law calf.38 The most expensive title was the five-volume set of *Defenses to Crime* at thirty dollars, followed by the four-volume set of the thirteenth edition of Kent's *Commentaries* at twenty. Among the more interesting titles were Harris' *Hints on Advocacy*, C.C. Langdell's volume on contract law, and the *American Settlers' Guide*.39 A lawyer could purchase not only American

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36. *Id.* at 5.
37. *Id.* at 3.
39. Listing the particular editions of the treatises in the *Crane Catalogue* requires some speculation. We assume that George Crane purchased books available to him in 1885 and 1886 and listed those books in the *Catalogue*. Further, we assume that he purchased books from the nearest possible publisher to defray the cost of transportation. Given those assumptions, the following citations are likely to be the editions Crane & Company were offering to Kansas attorneys in 1886: *HENRY N. COPP, AMERICAN SETTLER'S GUIDE: A POPULAR EXPOSITION OF THE PUBLIC LAND SYSTEM OF THE UNITED STATES OF AMERICA* (3d ed.) (Washington, H.N. Copp 1882); *RICHARD HARRIS, HINTS ON ADVOCACY, INTENDED FOR PRACTITIONERS IN CIVIL AND CRIMINAL COURTS WITH SUGGESTIONS*
books from Crane's, but also reprints of English titles including Blackstone's *Commentaries* and Ram's treatise on the *Science of Legal Judgment*. He could also purchase dictionaries from the catalogue including Bouvier's *Law Dictionary* and Taylor's *Law Glossary*. For the average Kansas practitioner, once Crane & Company decided to expand its business into law books there would have been very little need to resort to any book-seller for any of his law book needs other than this Topeka firm.

The Kansas law books Crane & Company traded in during the 1880s and 1890s shed some light on the development of the Kansas bar. In the years following statehood, the Kansas bar evolved from pockets of transplanted Eastern and Missouri attorneys to a unified, uniquely Kansan bar. The earliest Kansas materials printed were the official statutes and reporters, constituting the primary law of the new state. Eventually over the course of the first three decades following statehood, treatises and finding aids specific to Kansas law were created and published for use by the Kansas bench and bar. Furthermore, the rapid increase in Kansas attorneys during the decades of the 1870s and 1880s provided a ready market for Crane & Company and other legal publishers.


42. See Wilson, *The Early Years*, supra note 2, at 40 (stating that law practice experienced dramatic growth from the 1860s to the 1880s).
Practicing lawyers rely on annotated statutes to ascertain the laws in their states. As previously noted, one of the two contenders for the earliest legal text printed in Kansas is the 1855 Statutes, printed in 1855 by John T. Brady, Public Printer, at the Shawnee Mission Manual Labor School. Often referred to as the “Bogus Statutes,” they were drafted by a pro-slavery Legislative Assembly largely elected by non-residents who entered Kansas for the sole purpose of voting. In addition to pro-slavery legislation, the first Legislative Assembly of the Territory of Kansas passed numerous additional statutes, largely based on Missouri law and annotated with Missouri cases, totaling 1058 pages. Despite the vehemently negative treatment given this assembly by the victorious Free State faction, the earliest legislature must be commended for attempting to create a workable statutory system for the territory.

By 1861, the Free State faction had won the battle for control of Kansas government and the first session of the Legislature of Kansas was commenced on March 26th in Topeka. The General Laws of the State of Kansas: Passed at the First Session of the Legislature was printed in Lawrence on the press of the Kansas State Journal. Certainly the Kansas statutes, printed in the form of session laws, were the most critical component of any Kansas attorney’s library for the period immediately following statehood. In 1862, the Legislature instructed the State Printer, J.H. Bennet, to print General Laws of the State of Kansas, In Force at the Close of the Session of the Legislature Ending March 6th, 1862. This 1116 page, two-volume tome was printed in Cincinnati, Ohio, at the Gazette Company’s Steam Printing House. Given the competition between pro-slavery and Free State legislatures during the territorial period, the Legislature’s desire to compile the laws in effect into one publication makes sense.

The first true codification of Kansas statutes began in 1867 with an act requiring the Governor to appoint three Commissioners to “revise

43. See 1855 Statutes, supra note 22.
44. See Preface to General Statutes of the State of Kansas: Revised by John M. Price, Samuel A. Riggs, and James McCahon, Commissioners Appointed by the Governor, Under an Act Approved February 18, 1867, Reported To, and Amended and Adopted By, the Legislature, at Its Regular Session in 1868 (Lawrence, Kan., John Speer, Public Printer 1868) [hereinafter General Statutes 1868]; Wilson, The Early Years, supra note 2, at 32.
45. General Laws of the State of Kansas, Passed at the First Session of the Legislature, Commenced at the Capital, March 26, 1861 (Lawrence, Kan., Kansas State Journal Steam Power Press Print, 1861).
46. Id.
48. Id.
and codify the civil and criminal codes of procedure, and all laws of a
general nature, of this State."\textsuperscript{49} John M. Price of Atchison, Samuel A.
Riggs of Lawrence, and James McChon of Leavenworth were
appointed to publish the \textit{General Statutes of 1868}.\textsuperscript{50} Price, Riggs, and
McChon included head notes, marginal notes, case annotations, and an
index, thereby making statutory research much easier for Kansas judges
and attorneys. As the first annotated codification of the laws of Kansas,
the \textit{General Statutes of 1868} is, in essence, the oldest precursor to the
\textit{Kansas Statutes Annotated}. In addition to statutes, practicing lawyers
need access to the appellate decisions of a state in order to determine
the law on a given issue. The first Kansas reporter was Elliot V. Banks,
who inherited the job in 1863 after Judge Louis Carpenter's death in
Quantrill's Raid on August 21, 1863. Banks was an early Lawrence lawyer,
and he served as the court reporter for the first five volumes of
\textit{Kansas Reports}, ending with the April 1870 term.\textsuperscript{51} The first volume
reported the decisions of the Kansas Supreme Court from January 1862
to October 1863. In the preface to the first volume, Banks notes:

The profession, doubtless, are entitled to an apology from some source, for
the delay attending the publication of this volume. Its preparation was
commenced by my predecessor in office,—the lamented CARPENTER,—early in
1863. As the materials were deposited in the archives of this Court, his industry
and skill caught them up and fashioned them for the press. But that terrible
calamity which took him from among us, also swept away nearly all his labors
on this volume. Only fragments of a few cases survived the flames of the
guerilla torch, on the 21st of August of that year.\textsuperscript{52}

The first volume of \textit{Kansas Reports} was first published in 1864 in Law-
rence by W.S. Rankin & Company.\textsuperscript{53}


\textsuperscript{50} \textit{GENERAL STATUTES 1868, supra note 42.}

\textsuperscript{51} See Wilson, \textit{A Survey in Retrospect, supra note 6, for more information about Elliot V. Banks.}


\textsuperscript{53} \textit{Id.}
The earliest cases from Kansas, however, were published six years after the publication of the first volume of the *Kansas Reports*. James McCallon's *Reports of Cases Determined in the Supreme Court of the Territory of Kansas: Together with an Important Case Determined in the District Court of the First Judicial District of Said Territory Before One of the Judges of the Supreme Court and Several Important Cases Determined in the Circuit Court of the United States for the District of Kansas* was published by Callaghan and Cockcroft in Chicago in 1870.\(^54\) McCallon sought out the earliest territorial Supreme Court decisions and federal court decisions from Kansas to publish as an unofficial addendum to the *Kansas Reports*. McCallon notes in the preface to *McCallon's Reports* that he relied on the collection of opinions gathered by Thomas Means and allegedly printed in 1860 but abandoned after his death.\(^55\) Additionally, McCallon thanks the judges of the Territorial Supreme Court, the U.S. District Court, the Circuit Court for the District of Kansas, as well as members of the Leavenworth bar for providing access to the manuscript opinions in the cases reported. In sharp contrast to modern legal publishing, McCallon explains his simple motivation by noting, "The present volume was prepared for press with the view of rescuing the decisions contained in it from oblivion, and putting them in a shape to be of some use to the profession, and without any prospect of pecuniary reward."\(^56\)

*McCallon's Reports* contains the decisions of the Territorial Supreme Court of Kansas beginning in December, 1858, and ending in January, 1861. Some commentators have characterized these twenty-eight opinions as unimportant.\(^57\) Of importance, however, is the fact that no opinions still exist for the first four and one-half years of the Territorial Supreme Court's existence.\(^58\) One interpretation of the absence of these opinions is that the Court simply did not render any decisions. Given the burning and looting common in Kansas prior to the end of the Civil War, we think it is more likely that McCallon was simply unable to se-

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55. *Id.* at xiii.

56. *Id.*

57. WILSON, THE EARLY YEARS, supra note 2, at 35.

58. *Id.*
cure any intact opinions from this period, hence none were published and are now forever lost.

In our opinion, McCahon’s Reports does contain at least one historically interesting case from the District Court of the first Judicial District of Kansas Territory, the precursor to the United States District Court for the District of Kansas. During the April 1860 term, in United States v. Weld, the federal court held that the guardian of an infant slave owner in Kentucky had no right under federal law to pursue a runaway slave into Kansas to arrest the slave on the behalf of his ward. Judge Pettit concluded that “This opinion has been hastily written in the midst of turmoil, interruption and confusion—in the absence of a library to consult, and without time to correct or pay much attention to legal diction, but I am confident that, in its main features, it will stand the test of the most searching and rigid legal and judicial criticism.” The absence of a court or association library for the bench and bar to use must have been an impetus for the creation of the Leavenworth Law Library Association in 1866. McCahon’s Reports concludes with five cases from the Circuit Court of the United States for the District of Kansas dating from May 1863 to December 1868.

After the early work of Banks and McCahon began the publication of Kansas court decisions, the Kansas Supreme Court continued to appoint an official reporter and print Kansas Reports at one of the Kansas presses. The tradition of printing the official reporter for Kansas on a Kansas printing press continues to the present. The rapid expansion of the Kansas bar in the 1870s and 1880s lead to shortages of Kansas Reports, causing private presses to begin reprinting the back issues of Kansas Reports. Reprinting of state reporters became a national trend in the mid-to-late nineteenth-century due to the increase in the number of attorneys.

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60. Id. at 196.
61. See infra Part III.
62. See Crane Catalogue, supra note 35, at 4 (“The Reports of the Supreme Court of Kansas are published by the State . . . . The State Printer has never stereotyped the Reports, and as the bar of the State has increased, the limited edition has run out at a rapidly increasing rate, until now (September, 1886) none of the originals previous to volume 26 can be purchased new. The ‘out of print’ volumes are being reproduced with annotations, by private enterprise as fast as two publishing houses can well do the work.”).
To meet the demand for new copies of the Kansas Reports, Commonwealth Publishing House, owned by F.P. Baker & Sons in Topeka, and then Crane & Company worked with John B. West's publishing house in Minnesota to reprint Kansas Reports as the second edition of Kansas Reports. The intellectual force underpinning the revision of Kansas Reports into a second edition was Charles Frederick William Dassler of Leavenworth, who was to become one of the first major authors of Kansas law treatises. In the preface to the first volume of Kansas Reports, second edition, Dassler notes,

The first volume of Kansas State Reports being out of print suggested the preparation of this volume. This book, intended to take the place of the first volume of Kansas State Reports, was thought incomplete without inserting all cases that could be found up to and including the period embraced in such first volume.

Dassler added value to the reprinted volumes Kansas Reports by correcting errors, writing new headnotes for McCahon's Reports, adding an index at the end of each volume, and keying the pages in the Kansas Reports, second edition, to the original through the use of star pagination. Most insightfully, Dassler provided the utility of citations to later decisions (a function that we now use Shepard's and Westlaw's KeyCite to fulfill) noting that "[e]ach case has been thoroughly annotated, with references to later decisions, thus intending to give at a glance, as near as was practicable, a terse statement of the law on the subject matter of the case or point decided, as expounded or modified by the later decisions of the supreme court of Kansas." In short, C.F.W. Dassler went far beyond the traditional role of reporter to add value to Kansas Reports for the practicing attorney.

In addition to primary sources such as statutes and case reports, practicing attorneys rely heavily on finding aids and summaries of the state of the law to assist them in ascertaining and understanding the controlling law of a jurisdiction. In Kansas, the earliest Digests began to appear during the 1870s. C.F.W. Dassler created the first known digest

64. See supra note 62; see also C.F.W. Dassler, Preface to Reports of Cases Argued and Determined in the Supreme Courts of the State and Territory of Kansas 3 (Topeka, Kan., Commonwealth Publishing House, F.P. Baker & Sons 1881) [hereinafter Kansas Reports, second edition]. The title page to this edition reads "Vol. 1. Containing a Revised Report of all Cases reported in Vol. 1 of KANSAS STATE REPORTS, and in McCAHON'S REPORTS, and several Unreported Cases, with Copious Notes, etc." (capitalization in original).
65. See infra notes 69–71 and accompanying text.
66. See Dassler, Preface to Kansas Reports, second edition, at 3.
67. Id.
68. Id.
for Kansas cases in 1874, entitled Dassler’s Kansas Digest. 69 Unfortunately, few, if any, copies of this publication currently exist. In 1879, C.F.W. Dassler issued a second digest, in two volumes, entitled Digest of the Decisions of the Supreme Court of Kansas from the Earliest Period to the Year 1879, Including the 21st Volume of Kansas Reports.70 He wrote, “We submit this work to the judgment of a generous profession, with the hope that it will aid them in the arduous duties of their calling on the bench or at the bar, believing that any imperfections that may be found will receive at their hands the indulgence to which it is entitled by reason of the large number of cases digested and the amount of matter presented.”71 Indeed, C.F.W. Dassler summarized the entirety of Kansas case law in a fashion that would permit a Kansas attorney to quickly identify the case law surrounding a given subject.

The market for finding aids in 1880s Kansas must have been significant, as two additional competing digests were published in 1882 and 1885, respectively. The first, written by George R. Chaney of Salina, was entitled Index-Digest of the Decisions of the Supreme Court of the State of Kansas, Embraced in McCahon’s Reports, and Volume One to Twenty-Five Kansas Reports, with References to the Compiled Laws of 1879.72 This volume was half the length of C.F.W. Dassler’s Digest, but it included a Table of Cases citing subsequent cases that cited, criticized, or overruled each decision. In 1885, Crane & Company printed yet another digest, written by Irwin Taylor of Topeka, entitled Brief-Digest of the Decisions of the Supreme Court of the State of Kansas.73 It categorized Kansas cases as civil or criminal and, like George Chaney’s work, was printed in one volume. Given the competition between publishers, we feel it safe to assume that most Kansas attorneys in the 1880s and 1890s probably owned one or more Kansas digests for use with Kansas Reports.

69. C.F.W. DASSLER, DASSLER’S KANSAS DIGEST (St. Louis, W.J. Gilbert 1874).
71. Id. at 4.
The rapid growth in Kansas legal publication during the late 1870s into the 1880s can also be traced in the publication of treatises specific to Kansas practice. Unfortunately, it is quite difficult to identify the first treatise specific to Kansas law. The Crane Catalogue of 1886 identifies a number of Kansas Books, including titles such as *Kansas Lien Laws and Forms* and the *Notaries’ Manual for Kansas*, with no known existing copies and no date of publication listed in the Crane Catalogue.\(^{74}\) The earliest known Kansas law treatises were published in 1872. Joseph R. Swan and Preston B. Plumb wrote *A New Treatise on the Law Relating to the Powers and Duties of Justices of the Peace and Constables in the State of Kansas, with Practical Forms*.\(^{75}\) The other earliest Kansas legal treatise also focuses on Justices of the Peace. Hugh M. Spalding’s *A Treatise on the Law Relating to the Powers and Duties of Justices of the Peace and Constables in the State of Kansas*, first published by Crane and Byron in 1872, is heavily annotated with both Kansas case and statute citations as well as citations to both American and British cases.\(^{76}\) Crane published a second treatise by Spalding on practice before Justices of the Peace in 1876,\(^{77}\) which appears to be a modification of an Ohio treatise by Spalding\(^{78}\) on the same subject. Surprisingly, Crane & Company printed an Indiana version of the same treatise in 1876 at the press in Topeka.\(^{79}\)

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74. CRANE CATALOGUE, supra note 35, at 5.
75. J.R. SWAN & P.B. PLUMB, NEW TREATISE ON THE LAW RELATING TO THE POWERS AND DUTIES OF JUSTICES OF THE PEACE AND CONSTABLES IN THE STATE OF KANSAS, WITH PRACTICAL FORMS (Cincinnati, Robert Clarke & Co. 1872).
76. HUGH M. SPALDING, A TREATISE ON THE LAW RELATING TO THE POWERS AND DUTIES OF JUSTICES OF THE PEACE AND CONSTABLES IN THE STATE OF KANSAS (Topeka, Crane & Byron, 1872).
79. HUGH M. SPALDING, SPALDING’S TREATISE: THE PRACTICE AND FORMS AT LARGE IN JUSTICE’S COURT FOR THE STATE OF INDIANA AND AN ANALYSIS OF THE LAW AND PRACTICE CONCERNING PERSONAL PROPERTY, FOR ATTORNEYS AT LAW, LAW STUDENTS, JUSTICES OF THE PEACE, BANKERS, BROKERS, MINISTERIAL OFFICERS, AND BUSINESS MEN (Topeka, Kan., George W. Crane & Co. 1876). This suggests, perhaps, that Spalding’s contract with Crane & Company to publish the Kansas version of the treatise was part and parcel of the contract to publish the Indiana version of the treatise, or, alternatively, that Crane & Company was a significantly less expensive source of publication than the Cincinnati publisher Wiltstach, Baldwin, the original publisher of the Ohio version of the treatise in 1875. Regardless, it demonstrates that George W. Crane was publishing law books beyond the boundaries of Kansas law as early as the 1870s.
In the late nineteenth century, lawyers in western states began to create formal professional organizations. The official publications of these organizations shed light on the ways in which lawyers viewed themselves and their role in society. The Kansas Bar Association was initially organized on January 9th and 10th, 1883, in the courtroom of the Supreme Court of Kansas in Topeka. The earliest publication of the Kansas Bar Association is a ten page pamphlet entitled The Constitution, By-Laws, Officers and Members of the Bar Association of the State of Kansas, published in 1885 by the Kansas Publishing House in Topeka. In addition to the original structure and by-laws of the Association, this pamphlet highlights the first 119 judges and attorneys who joined the Association during the first five meetings in Topeka and Leavenworth between January 1883 and February 1885.

Starting in 1886, Crane & Company published the Annual Meeting of the Bar Association of the State of Kansas. These initial Kansas Bar Association publications are fascinating in that they contain the written texts of speeches made to the Association during each annual meeting. For example, in the third Annual Meeting from 1886, Judge David J. Brewer of the Eighth Circuit Court of Appeals presented a paper entitled simply Libel, which decried libelous attacks on character by lawyers and by others. He noted that “[i]nvective, calumny and abuse are the only weapons which some lawyers seem able to wield” and suggested that the courtroom should be the first place to combat libel. Judge Brewer was on the Kansas Supreme Court from 1871 to 1884 and the U.S. Supreme Court from 1889 to 1910. In the sixth Annual Meeting, Topeka attorney David Overmyer presented a lecture entitled The Legal Profession—Its Duties and Obligations to Society and noted, “The lawyer understands the language of the human heart, from the whispered wail of hopeless woe to the loud, exultant peals of triumph. His ears are attuned alike to the

80. See John Frontron, Jr., The KBA Story, in REQUISITE LEARNING AND GOOD MORAL CHARACTER, supra note 2, at 2.
81. CONSTITUTION, BY-LAWS, OFFICERS AND MEMBERS OF THE BAR ASSOCIATION OF THE STATE OF KANSAS (Topeka, Kan., Kansas Publ’g House 1885).
82. Id. at 8–11.
83. ANNUAL MEETING OF THE BAR ASSOCIATION OF THE STATE OF KANSAS HELD IN THE CITY OF TOPEKA, JANUARY 12, 1886 (Topeka, Kan., Geo. W. Crane & Co. 1886). In 1897, The Times of Clay Center, Kansas, took over publication of the Annual Meetings. The volume in possession of the University of Kansas Law Library spans the period 1885–1899, binding the earlier proceedings printed by Crane & Company with the later proceedings printed by The Times.
sweet notes of sympathy and affection, and the hoarse growl of bestial degradation.” In addition to the entertaining use of prose by late nineteenth-century lawyers, these earliest publications of the Kansas Bar Association also give the names and towns of the members of the Association each year, thus making the Annual Meetings a valuable tool for both genealogical research and historical study of lawyers in Kansas.

III. THE LEAVENWORTH LAW LIBRARY ASSOCIATION

Although, as we have seen, a number of Kansas lawyers possessed private law libraries, few had the financial ability to amass a comprehensive legal collection. In 1866, therefore, a group of Leavenworth attorneys led by David J. Brewer incorporated the Leavenworth Law Library Association. The avowed purpose in creating the Association was to establish “a Library of Law Books and Periodicals in Leavenworth City, Kansas.” Membership in the Association came at a cost. The initiation fee was twenty dollars, and each member was required to pay ten dollars annually thereafter. No one other than a member of the Association generally could have access to the books and periodicals and these had to be consulted in the library building or in the District Court. Thirty-three lawyers subscribed as founding members. By 1870 there were thirty-nine regular members and three life members (who had paid a one time fee of $100).

In 1870, when the Association printed its first library catalogue, it owned 1169 volumes. Of these 104 were treatises; 34 were volumes of laws. The library also contained a substantial collection of statutory materials, digests, and case reports. The specific items in these categories

86. ACT OF INCORPORATION AND ARTICLES OF ASSOCIATION OF THE LEAVENWORTH LAW LIBRARY ASSOCIATION TOGETHER WITH A CATALOGUE OF BOOKS BELONGING TO SAID ASSOCIATION FEBRUARY 1, 1870 (Leavenworth, Kan., G.L. Hathaway 1870) [hereinafter LLA CATALOGUE]. A photocopy is in the possession of the authors, and an original copy is in the possession of the Kansas State Historical Society in Topeka.
87. Id. at 1.
89. Id., Art. VIII, at 5. Interestingly, the Association made an exception for “members of the Bar from other counties, when engaged in the trial of causes in the Courts of Leavenworth County.”
90. Id., Art. XI, at 6.
91. Id. at 8.
92. Id. at 9–16.
are especially interesting and present several historical and bibliographical puzzles.

The thirty-nine treatises owned by the Association in 1870 were very much the standard legal treatises of the day. The Association owned, of course, Blackstone’s *Commentaries* (but only the second volume of four), Greenleaf’s treatise on evidence, a full set of Kent’s *Commentaries*, Parson’s treatise on contracts, and Sedgwick’s treatise on damages, among others.93 A number of the titles listed were, like the Blackstone, broken sets. It seems likely that the presence of these volumes in the library indicates that many of the books in the Association library were, in fact, gifts rather than purchased, for neither lawyers nor librarians will generally purchase odd volumes.

The collection also contained a number of English treatises, such as several works by Chitty, as well as a text on New York practice, which also may well have come by way of gift.94 The library also had one of the leading English works on Roman law, the translation of Domat’s treatise on the civil law.95 What the Association did not have in 1870, of course, were treatises on Kansas law, for these had yet to be published.

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94. *LLA Catalogue*, supra note 86, at 9–10. We speculate that the Association may have owned the following editions: JOSEPH CHITTY ET AL., *A PRACTICAL TREATISE ON THE CRIMINAL LAW: WITH COMPREHENSIVE NOTES ON EACH PARTICULAR OFFENCE, THE PROCESS, INDICTMENT, PLEA, DEFENCE, EVIDENCE, TRIAL, VERDICT, JUDGMENT, AND PUNISHMENT* (5th Am. ed.) (New York, Banks, Gould 1847) (in three volumes, described as “5th American from the 2d and last London ed., corr. and enl. by the author, with notes and corrections, By Richard Peters and Thomas Huntington, to which are now added notes and references to the cases decided in the courts of the United States and of the several states, to the present time, as well as to the late English decisions by J.C. Perkins.”); JOEL TIFFANY & HENRY SMITH, *THE NEW YORK PRACTICE: A TREATISE UPON PRACTICE AND PLEADINGS IN ACTIONS AND SPECIAL PROCEEDINGS IN THE COURTS OF RECORD OF THE STATE OF NEW YORK* (Albany, N.Y., W.C. Little 1864–1865) (in two volumes).

Among the miscellaneous volumes listed in the Association catalogue are a number of Kansas items, including copies of the House and Senate Journals of the Kansas Legislature, other Kansas legislative materials, and county documents from Wyandotte and Leavenworth Counties. They also owned the 1861 Kansas Geological Survey.\textsuperscript{96} And, as one would expect, they owned copies of the published Kansas laws from 1855 through 1869.

Among the digests, the Association owned texts digesting U.S. cases, as well as state cases from Illinois, Tennessee, Massachusetts, Maine, Kentucky, Maryland, Ohio, and New Jersey.\textsuperscript{97} Among the reports which they owned were the \textit{U.S. Supreme Court Reports}, and state reports from Maine, Vermont, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Ohio, and Illinois, as well as 118 volumes of English case reports. What is conspicuously absent from both the digest collection and the collection of reports are volumes from any of the former slave states, including Kansas' neighbor, Missouri. It seems most likely that the victorious Unionists of Kansas would have regarded the laws and cases from the former slave states as wholly tainted by the "peculiar institution" and would not have been willing to utilize these as authority. It is important to remember that one of the most prominent members of the Leavenworth Bar after the Civil War was General William T. Sherman.\textsuperscript{98} One cannot imagine General Sherman standing in court and citing a Missouri case as precedent.

The existence of the Leavenworth Law Library Association in the immediate post-war period is testimony to the importance of a working library for Kansas lawyers. The willingness of such a substantial number of the Leavenworth lawyers to pay an annual fee of ten dollars to have access to these volumes cannot be discounted. It is also interesting, from the standpoint both of the history of Kansas law practice and of the Kansas legal profession that the one exception the library made to the prohibition against removing books from the Association library was that books could be taken to the court, presumably to be used by the judges and by the lawyers in the course of trials. This suggests both that many lawyers did not own their own copies of these books and also that

\textsuperscript{96} We suspect that this reference in the \textit{LLA Catalogue} may be in error and refer instead to G.C. Swallow et al., \textit{Preliminary Report of the Geological Survey of Kansas} (Lawrence, Kan., J. Speer, 1866).

\textsuperscript{97} LLA \textit{CATALOGUE}, \textit{supra} note 86, at 12.

\textsuperscript{98} Sherman was a member of the Leavenworth firm of Sherman, Ewing & McCook. Wilson, \textit{The Early Years}, \textit{supra} note 2, at 38; Arthur J. Stanley, Jr., \textit{Lawyers in Politics, in Requisite Learning & Good Moral Character}, \textit{supra} note 2, at 75, 77.
they believed that it was helpful to be able to display and use these volumes in court. This latter point is confirmed by an anecdote involving General Sherman related by H. Miles Moore, one of the founding members of the Leavenworth Bar and the Leavenworth Law Library Association, in his history of Leavenworth:

There [in justice court] he found Colonel Lewis Burns, the attorney for the plaintiff, with a half-dozen witnesses and a small library on the table before him. Mr. Sherman was a little surprised at the number of witnesses, and especially at the array of law books. He rightly concluded it was a big bluff on the part of Colonel Burns to overawe that justice with the law . . . . He [Col. Burns] commenced hurling, in thunder tones, page after page and volume after volume of that library before him . . . . [The justice] decided the case in favor of Colonel Burns.99

Even the appearance of book learning could win a case! This alone would have been good reason for every Leavenworth lawyer who could afford the fees to join the Law Library Association. And so, apparently, they did.

IV. CONCLUSION

The history of law books and legal publishing in early Kansas highlights the relative sophistication of the early Kansas Bar. Individual attorneys, such as Charles Crane, James Emery, and William T. Sherman, had access to significant collections of reporters and treatises from which to construct legal arguments. Association libraries, such as the Leavenworth Law Library Association, were created to fill the perceived need for access to research materials. Publishers, such as Crane & Company, identified the Kansas bench and bar as a suitable market for both reporters and treatises specific to Kansas. Despite the potential complications of practicing law on the Frontier, nineteenth-century Kansas lawyers used many of the same research resources used by lawyers today, including annotated statutes, digests, citators, and case reporters. Aside from the revolutionary changes wrought by computer-aided legal research, there is much in common between the legal reading

and research habits of Kansas lawyers of the nineteenth-century and those of the twenty-first century.