LAWYERS' EVERYDAY LIVES IN BYGONE DIARIES

DURABLY EPHEMERAL PERSPECTIVES ON THE DAY-TO-DAY OF 19TH-CENTURY AMERICAN LAWYERS

M.H. Hoeflich

FOR CENTURIES, LAWYERS HAVE HAD TO concern themselves with scheduling and keeping records of their activities and also making notes about their research. A lawyer's life was and still is filled with books, paper, and documents, and with deadlines and requirements that lawyers maintain records of what they have done for their clients. Indeed, the modern *Rules of Professional Conduct* make timeliness and record-keeping professional obligations for lawyers.[1] Today, we depend upon our mobile phones, laptop computers, and digital assistants to keep track of our schedules, take notes of our reading, and record events in both our professional and personal lives. In the nineteenth century, those burdens fell upon the humble lawyer's diary (or at least most of them did – many lawyers used separate volumes known as commonplace books for taking notes of their reading[2]).

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[1] *See, e.g.*, MODEL RULES OF PROFESSIONAL CONDUCT 1.3, 1.4, 1.5(c).

[2] *See* M.H. Hoeflich, *The Lawyer as Pragmatic Reader: The History of Legal Common-Placing,* 55 ARK. L. REV. 87, 118 (2002).

The habit of keeping diaries as general *aides memoires* and as records of one's life and thought goes back in the Western world to the Romans, and has persisted to various extents ever since. In the nineteenth century, diaries became commonplace in American society in general.[3] From children to adults, multitudes kept diaries. Some were quite elaborate and constituted quasi-autobiographies. Others were simply notes of the weather, chores done, or work performed for others. Many were records of their authors' spiritual development.[4] By the beginning of the nineteenth century, a few diaries, mainly of notable men and women, also began to be published and became a distinct and popular genre of literature. By mid-century, the production of blank diaries was big business.

For lawyers, diaries meant even more than they did for average citizens. An essential additional characteristic of the lawyer's diary in particular is that it is not only a record of what has occurred but, also, of what will occur within the lawyer's professional as well as social life. In the nineteenth century, when diaries designed especially for lawyers began to be printed in large quantities by numerous English and American publishers, they quickly became practically universal as well as practically indispensable tools of the trade – like law books, blank forms, and good paper on which to engross documents.

Thus, lawyers were not exempt from the nineteenth-century diary "mania." And today, libraries, archives, and private collectors possess the diaries of quite a few of those lawyers, from across the country and with a wide range of practices. (These holdings include the diaries of some quite prominent figures of the time, which I do not deal with here, since this paper focuses on non-celebrity lawyers and their records of their lawyering lives.) We find a wide diversity among these lawyers' diaries. In many cases, lawyers simply used a blank book, or a diary published for general use. But more and more used one of the specialty diaries tailored for lawyers' use by the inclusion of material – usually printed at the front of the diary – that the publisher deemed would be useful to the lawyer-diarist. This material included such things as governmental and judicial information, judicial holidays, court rules, currency, postal, and banking information,

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[3] *See* MOLLY MCCARTHY, THE ACCIDENTAL DIARIST (2013).

[4] *See What Kind of Historical Sources Are Letters and Diaries*, HISTORYMATTERS, historymatters.gmu.edu/mse/letters/whatkind.html.

and even reprints of early legal educator David Hoffman's *Fifty Resolutions in Regard to Professional Deportment*.

For the most part, the lawyers who owned these diaries used them to note court appearances, client work accomplished, meetings with clients, and other professional and personal activities. These entries are often interspersed among comments on the weather, social events, and the daily goings-on of the user's life. Occasionally there is mention of books purchased or read and comments thereupon. Unlike modern lawyers' diaries, these do not generally contain notes of how much time a lawyer worked on a particular client's matters. Lawyers rarely billed by time worked in the United States during the nineteenth century. Most billing was either transactional or contingent upon success in a case. Thus, there was little reason for a lawyer to keep track of time. On the other hand, several of the diaries describe times of events attended by the user.

In many ways, nineteenth-century lawyer diaries are the equivalent of a modern lawyer's cell phone, packed with information both useful to the lawyer and about the lawyer. Thus, even a brief survey of the contents of a handful of lawyers' diaries can open a window into the everyday life of American lawyers at that time that few other sources can rival. Furthermore, lawyers' diaries are what I call "unconscious sources" because, generally speaking, they were never intended to be read by anyone but the owner and survived by chance or as a result of family piety. Thus, they can provide an unfiltered view of lawyers' lives.

Some Exemplary Diaries & Their Characteristics

Physical Characteristics

Over the past thirty years I have collected dozens of nineteenth-century lawyers' diaries which, taken all together, are generally representative of the variety and breadth of the genre. They vary in format from pocket size to those of large format designed to be kept on a desk or bookshelf, but the majority were produced to fit into a coat pocket. They tend to be roughly the same size as a modern wallet, *i.e.*, three inches by five inches, and many may well have served the dual purpose of wallet for currency as well as diary. Many also have leather bindings although one

does find diaries – usually the larger format types – with thin book cloth bindings as well. Interestingly, I have found very few examples bound in skiver, the inexpensive composite leather commonly used to bind law books.[5] (I also have an odd handful that are bound in cardboard covered in marbleized paper.)

Often a diary will have a loop for insertion of a pen or pencil, and many also have foldover flaps to protect the contents, although this characteristic is far from universal. Many of these diaries also have a ribbon bound in to mark the day or week. Most are printed in black, although it is not unusual to find diaries in which there are multiple inks used to differentiate between days and weeks.

Many, as noted above, have introductory matter and some have dated, lined pages for owner entries. One example in my collection has a daily quote from a legal source for each day and an appendix at the end of the volume by which the user could look up these daily quotes. Many of the diaries have a pocket at the rear, often filled with receipts, scraps of paper, and other material their owners wished to save. In my collection I have examples that range from having every day filled with information to having just a few pages with brief notes.

Front & Rear Matter

Publishers who entered the daily diary market had to justify the expense of these specialized diaries that often cost a dollar or more, which was a considerable sum in the nineteenth century ($1 in 1850 was the equivalent of almost $35 in 2021). One of the principal ways to do so was to add textual material that a diary owner would find of value. Diaries designed for the general public would often include monthly calendars, often reminiscent of the calendars included in almanacs. In addition, there often were pages listing holidays, costs of domestic and international postage, and related matters. Specialized diaries for lawyers, bankers, and other professionals often had much more correspondingly specialized front matter. Many of

[5] According to Merriam-Webster, "skiver" is "a thin soft leather made of the grain side of a split sheepskin, usually tanned in sumac and dyed." MERRIAM-WEBSTER, www.merriam-webster.com/dictionary/skiver. This was, without question, the most common binding for nineteenth-century law texts. Every lawyer has seen law books bound in this thin, tan leather on law library shelves.

the printed texts are state or even city specific, indicating that these diaries were often published for a targeted, local audience. A few examples show the variety of this material:

- *The Lawyers Diary for the Year 1847* (New York: Bell & Gould) – Front matter: table of contents, almanac for 1847, lists of NY magistrates, sheriffs, county clerks, commissioners of deeds, lists of NYC public notaries, banks, fire insurance companies in NYC and Brooklyn, life insurance companies, election schedules for NY and NYC, office holders in NYC, terms of US and NY courts, US ministers at foreign courts and charges d'affaires, list of lawyers in NYC.
- *Gould's Lawyer's Diary for the Year 1881* (New York: W. Reid Gould) – Front matter: ads, title page, table of contents, calendar for 1881, lists of federal and state government officers, judicial officers, state court rules and terms, federal court judges, IRS officers, post office information, customs house information, foreign consuls, military information, state office information, legal interest rates, bank lists, insurance company lists, clubs, railroad, stage, and ferry lists, Brooklyn information, "Gould's Code Chronometer." Back matter: lists of NYC lawyers, notaries public, commissioners of deeds, lists of Brooklyn lawyers, notaries public, commissioners of deeds, lists of NY county commissioners of deeds, commissioners for other states, catalogue of Gould's law blanks for sale and legal stationery.
- *Moser's Lawyer's Diary for 1883* (Chicago: Moser & Co.) – Front matter: reprint of David Hoffman's *Fifty Resolutions*, postage and stamp duties, blank pages headed "Terms of Court." Each daily entry has a printed quote from a legal source. Back matter: blank pages headed "Name and Address," blank pages for each month headed "Cash Accounts," blank pages headed "Memoranda," followed by an index to the daily quotations.
- *Wisconsin Lawyer's Diary for 1889* (Milwaukee: C.L. Powers) – Front matter: calendars for 1888-1890, Rules of Practice of the Supreme Court of Wisconsin, Rules of Practice for the Circuit Court, postal laws foreign and domestic, list of notaries, JPs, etc., court calendars, list of judicial officers, and attorneys' directory (of Wisconsin), listed by county.

ILLUSTRATIVE CONTENT

Most published information about lawyers' lives in the nineteenth century tends to be drawn from sources related to prominent jurists such as Daniel Webster, Joseph Story, Rufus Choate, Richard Henry Dana, and other lawyers and judges whose professional achievements have attracted the attention of historians. Archival material about ordinary lawyers – correspondence, diaries, documents – is available in libraries, archives, and private collections, and is far less often published precisely because these were "ordinary" lawyers whose professional activities did not, in the view of most historians, have a great deal of impact on the development of the law. Yet it is these materials created by ordinary lawyers that give the best picture of how the law worked in practice and how the vast majority of lawyers lived their lives. These materials provide us with an intimate, unfiltered look at the legal profession in the nineteenth century.

In this section, I will provide a narrative based upon extracts from a selection of diaries in my personal collection. The diaries were written by lawyers from Quincy, Massachusetts; Hudson, New York; and Gettysburg, Pennsylvania, in the period from 1845 to 1881. As such, they may be taken as representative of a particular aspect of Northeastern lawyers and law practice in mid- to late-nineteenth-century United States.

The 1845 Diary of John C. Newkirk

John C. Newkirk was born in 1810 in Montgomery, New York. He served an apprenticeship in the office of his uncle, George Crist, in Brooklyn. In 1836 he set up a law and land business in Joliet, Illinois, but was not successful and moved back to Hudson, New York, where he was admitted to the Bar in 1843. From that point until two years before his death in 1890, he carried on a successful law practice with Franklin Chace. He served a term as District Attorney of Columbia County, and also served as a local judge.[6] Thus, the 1845 diary provides insights into the life of a relatively young lawyer starting out in Hudson, a prosperous small town.[7]

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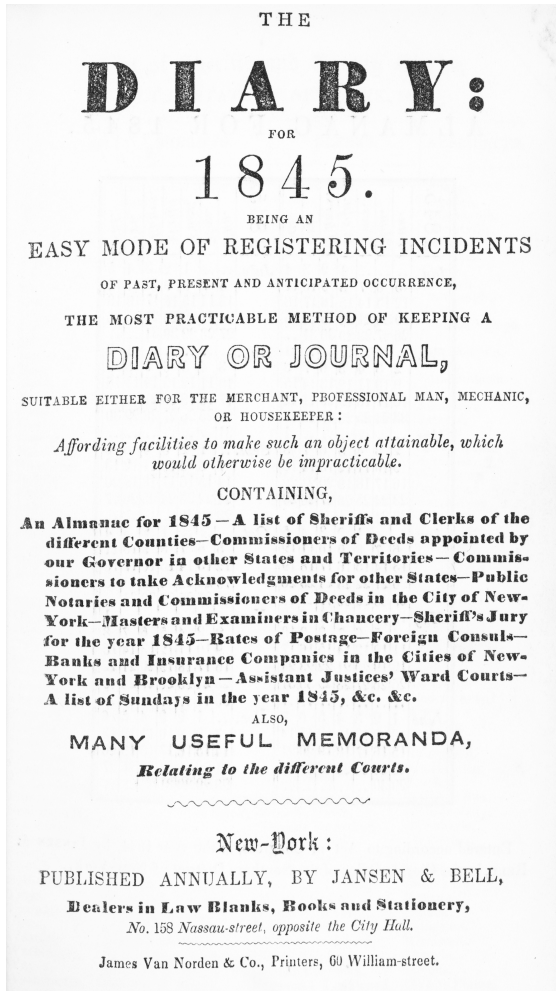
[6] Biographical information is taken from FREDERICK SIMON HILLS, NEW YORK STATE MEN: BIOGRAPHIC STUDIES AND CHARACTER PORTRAITS, vol. 1 206 (1910); ALDEN CHESTER, COURTS AND LAWYERS OF NEW YORK. A HISTORY 1809-1925, vol. 3 1021 (1925).

[7] *John C. Newkirk Papers, 1839-1856*, NEWBERRY LIBRARY CATALOGUE, https://i-share-nby.



THE

DIARY:

FOR

1845.

BEING AN

EASY MODE OF REGISTERING INCIDENTS

OF PAST, PRESENT AND ANTICIPATED OCCURRENCE,

THE MOST PRACTICABLE METHOD OF KEEPING A

DIARY OR JOURNAL,

SUITABLE EITHER FOR THE MERCHANT, PROFESSIONAL MAN, MECHANIC, OR HOUSEKEEPER:

Affording facilities to make such an object attainable, which would otherwise be impracticable.

CONTAINING,

An Almanac for 1845—A list of Sheriffs and Clerks of the different Counties—Commissioners of Deeds appointed by our Governor in other States and Territories—Commissioners to take Acknowledgments for other States—Public Notaries and Commissioners of Deeds in the City of New-York—Masters and Examiners in Chancery—Sheriff's Jury for the year 1845—Rates of Postage—Foreign Consuls—Banks and Insurance Companies in the Cities of New-York and Brooklyn—Assistant Justices' Ward Courts—A list of Sundays in the year 1845, &c. &c.

ALSO,

MANY USEFUL MEMORANDA,

Relating to the different Courts.

New-York:

PUBLISHED ANNUALLY, BY JANSEN & BELL,

Dealers in Law Blanks, Books and Stationery,

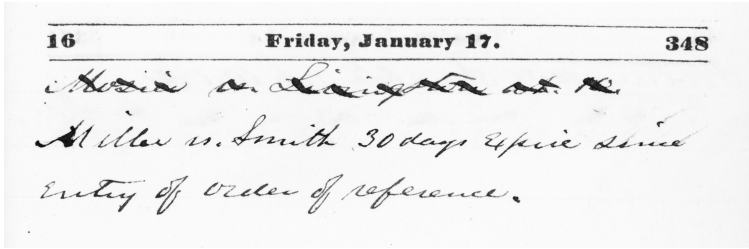
No. 158 Nassau-street, opposite the City Hall.

James Van Norden & Co., Printers, 60 William-street.

The title page of John C. Newkirk's 1845 diary.

The diary is primarily a list of cases to be argued in various courts, along with appearance and due dates. Newkirk was meticulous in noting case names as well as when he had to appear in court. The entries are usually quite brief, *e.g.*, "Waddell vs. Clark & Niles at 10" (Wednesday, August 20)

primo.exlibrisgroup.com/discovery/fulldisplay?context=L&vid=01CARLI_NBY:CARLI_NBY&search_scope=MyInstitution&tab=LibraryCatalog&docid=alma998735258805867.


16 Friday, January 17. 348

Miller v. Smith 30 days expire since entry of order of reference.

John C. Newkirk's diary entries for January 17, 1845.

and "Miller v. Smith 30 days expire since entry of order of reference" (Friday, January 16). Thus, Newkirk used his diary very much the way a modern lawyer would do so to ensure that he appeared in court and filed papers as necessary.

The diary also has a page in the rear where Newkirk listed his borrowings. He borrowed money a number of times, usually for fairly modest sums ranging up to $125. We may assume that these were operating loans for his practice. Perhaps the most interesting feature of the diary is the number of cases in which Newkirk was employed. Many weeks, he was in court five days arguing cases. There are only a few weeks when he appeared in fewer than two cases. Clearly, most of these cases did not last long, since they rarely extended more than one day in the diary. But from the numbers of cases Newkirk tried, it becomes obvious that he had a busy practice soon after he set up his office in Hudson.

The 1854 Diary of Fayette M. Butler

Fayette M. Butler was born in Connecticut in 1831, but spent his life in Hudson, New York. He was educated in Hudson and read the law in two law offices in Hudson. In 1861 Butler joined the New York Volunteers and served until his discharge in 1863 after being wounded several times and enduring incarceration in the notorious Libby Prison.[8] His diary, like that kept by John C. Newkirk, reflects a young lawyer's life and practice. Unlike Newkirk's diary, which was primarily a planning calendar, Butler's

[8] *See Factors in Columbia County History Volume II: "Bi-Bu" Surnames*, USGENNET, www.usgennet.org/usa/ny/county/columbia/1900bios/b2_surnames.htm.

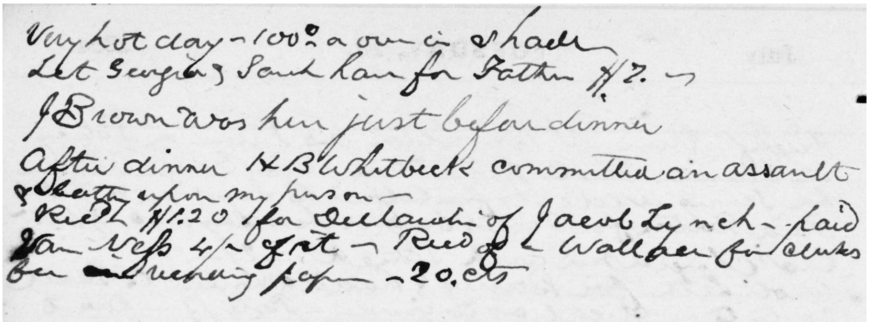
diary is a record of both his professional and personal lives. As such it provides both a fascinating view of a young lawyer's life as a whole and some insight into Butler's character.

Butler's practice was general. It consisted not only of trial and general office work, but also of a great deal of estates work, including guardianships and executorships. This was a bit unusual for a young lawyer (Newkirk, for example, did virtually none of it), mainly because estates work generally required an extensive social network. In this case, Butler, as a lifelong resident of Hudson with family ties to the area, may have been at an advantage. He was ambitious. In addition to carrying on a regular law practice, he served as a justice of the town, and during the year covered by this diary he was also appointed as an agent of the Colonial Life Assurance Company, an activity which may well have increased his professional income. Like Newkirk, Butler tended to borrow small sums during the year. Unlike Newkirk, Butler also recorded loans he made to acquaintances. This would indicate, again, that an informal lending network among lawyers and businessmen existed in Hudson, permitting them to finance their businesses without recourse to banks or other financial institutions. There is no evidence in Butler's or Newkirk's diaries of interest being charged to or by the lawyers.

Because Butler recorded both professional and personal activities in his diary, we also gain some insight into his leisure activities. There are many entries in the diary recording purchases made at local bookstores of magazines such as *Harper's Monthly*, as well as books, the vast majority of which were not law related. Butler also enrolled to take French lessons and several entries record his attendance at these. Most interesting, however, are the numbers of evening lectures Butler attended. Several of these were by notable speakers. For instance, on Tuesday, February 28, Butler attended a lecture by the well-known author, J.G. Saxe. The title of the lecture was "Yankee Land."[9]

One entry in the diary provides a look into Butler's actual law office. On Thursday, January 19, Butler wrote in his diary that he had paid one dollar for tobacco *for his office*. This is a reminder that in the antebellum

[9] John Godfrey Saxe was a popular nineteenth-century American poet. *See, e.g.*, POEMS BY JOHN G. SAXE (1881).


Very hot day - 100° a.m. in shade
J Brown was here just before dinner
After dinner H B Whitbeck committed an assault
& battery upon my person —

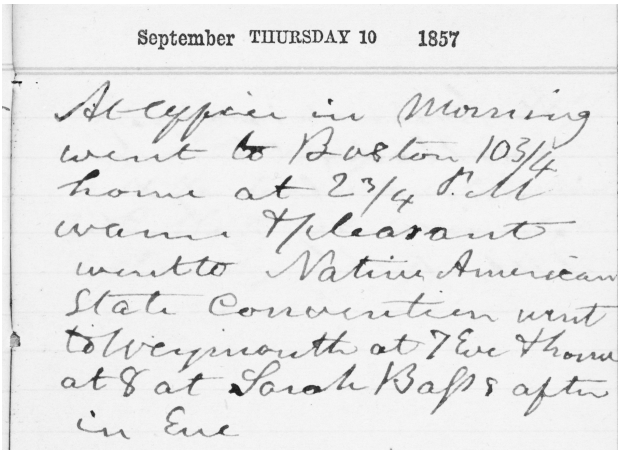
Fayette M. Butler's diary entries for January 17, 1845.

period, lawyer's offices were often gathering places for clients and friends and were primarily masculine strongholds. One can easily imagine Butler sitting with friends and clients round a stove in the winter, passing around a humidor filled with tobacco for his colleagues to enjoy. Certainly, this was a far cry from the modern law office.

The most unusual entry in Butler's diary is quite brief. On Friday, July 21, "After dinner, H.B. Whitbeck committed an assault and battery on my person." No further details are included for that day or the following days, although the injuries, if any, must have been minor, since he had a full day of work and errands on the Saturday following. It is certainly worth speculating as to whether this assault was a typical happening in Hudson in 1854 (no other such entry is found in the diary) or whether it was the result of a professional, personal, or political disagreement between Butler and Whitbeck. Whatever the explanation, it would seem that the life of a young Hudson lawyer was not without a degree of excitement and danger.

An Anonymous 1857 Lawyer's Diary from Quincy, Massachusetts

The anonymous 1857 diary in my collection belonged to a lawyer who maintained his office in Quincy, Massachusetts, and whose family resided nearby. Like Butler's diary, it records both personal and professional activities. Like Newkirk, the lawyer who kept this diary had a general practice and tried cases all around the area, including in Boston and Dedham.


September THURSDAY 10 1857

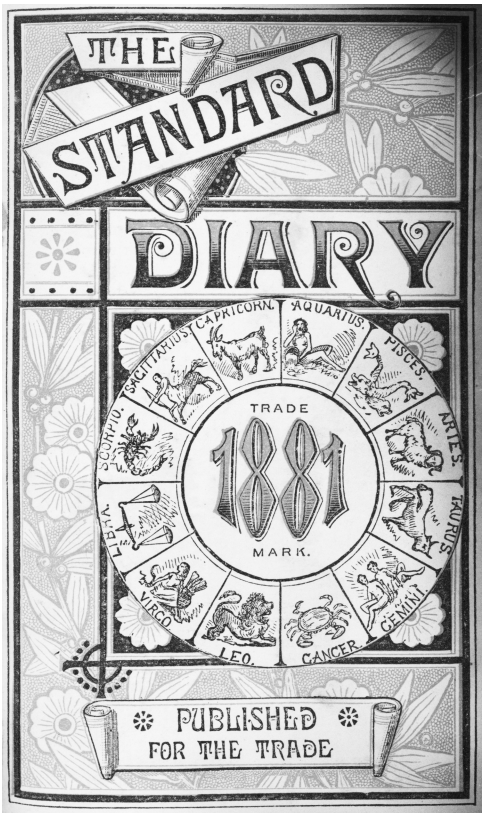
At office in Morning
went to Boston 10 3/4
home at 2 3/4 P.M.
warm & pleasant
went to Native American
State Convention went
to Weymouth at 7 Eve home
at 8 at Sarah Bass's after
in Eve

An anonymous lawyer's diary entries for September 10, 1857.

Many entries either list a case that the owner had tried that day or that he had spent "all day in the office" with no details of what he had done there. Often, he spent his evenings working at his office as well. Sundays were dedicated to church. Unlike Butler, the author of this diary also tended to spend some of his evenings with family or friends, in particular one young woman, Sarah Bass. He also spent some days with his family and, indeed, one entry records that he took his mother to Boston to go shopping.

The author was also involved in politics. On Thursday, September 10, he attended the "Native American State Convention at Weymouth."[10] The author did occasionally attend other entertainments, such as the "Callico Ball" on the evening of Tuesday, December 1. Like Butler and Newkirk, he was young. He was also clearly unmarried. He was a "homebody," spending most of his time working, at church, or visiting with friends in the evening. There are no records of his book purchases, if any, or of any monetary accounts. This diary – more than Butler's or Newkirk's – was more of a personal than a professional record of this young lawyer's life.

[10] Related to the Know-Nothing political party, this and similar state conventions were gatherings of nativist, anti-immigrant individuals that were held throughout the U.S. during the period.



An Anonymous 1881 Lawyer's Diary from Gettysburg, Pennsylvania

The final diary I will discuss dates from 1881 and belonged to a lawyer who noted his thirtieth birthday in this year. Again, this diary contains both personal and professional entries. The substance of this one differs from the others, especially because the author kept detailed records of his expenses in the daily entries and in detailed expense logs at the rear of the diary. These detailed records permit the modern reader to understand both the income and expenses of a late-nineteenth-century American lawyer.

This diarist had a practice not dissimilar to those who wrote the other diaries discussed in this essay. He carried on the general practice of law and seems to have spent much of his time doing estates work. He also

tried numerous cases and, in one entry, noted that he also provided a legal opinion to a client. Interestingly, he seems to have had a fairly standard charge both for trying cases and for doing ordinary estates work: $5.00.[11] However, he occasionally charged less for some work and, in one case, charged $75 for handling an estate.

Among his professional expenses, he paid $20 to $25 per month for his office and between $5 and $10 per month for his gas bill. His other office expenses included postage, stationary, law blanks, railroad and carriage fares, and $50 for his county tax. Among his personal expenses, his largest were his monthly room and board, ranging between $15 and $25. Like most young men, he also occasionally spent money on such things as collars, cravats, mending clothes, and even a straw hat for which he paid $1.50. He also took at least one fishing trip and a trip to visit the Round Top Observatory at Gettysburg. He also regularly had his hair cut at a cost of 15¢.

One of the most revealing parts of the diary is a page at the rear where he entered his monthly receipts and outlays, as well as a final accounting for the year. For the year, the author received a total of $555.59 and paid out a total of $537.85. That left him a "surplus" for the year of $17.74. In modern dollars, he earned the equivalent of $14,870.37, paid out the equivalent of $14,395.56, and had a year-end surplus the equivalent of approximately $474.81.

Although the amount the author earned in his law practice seems rather low in modern terms, he clearly did not live badly. He was able to purchase books. He bought fresh fruit, such as limes. He attended the opera and took both a fishing trip and a vacation to see local sights. Certainly, his life in 1881 was quite modest compared to those of the wealthy during the Gilded Age, but he did not live in poverty by any means.

The author also recorded that he spent some time reading to increase his knowledge of the law. He noted that he had studied Purden's *Digest* on Wednesday, February 16.[12] He also had political interests. He noted in the entry for Saturday, November 5, that he spoke at a political meaning in "Irish Town."

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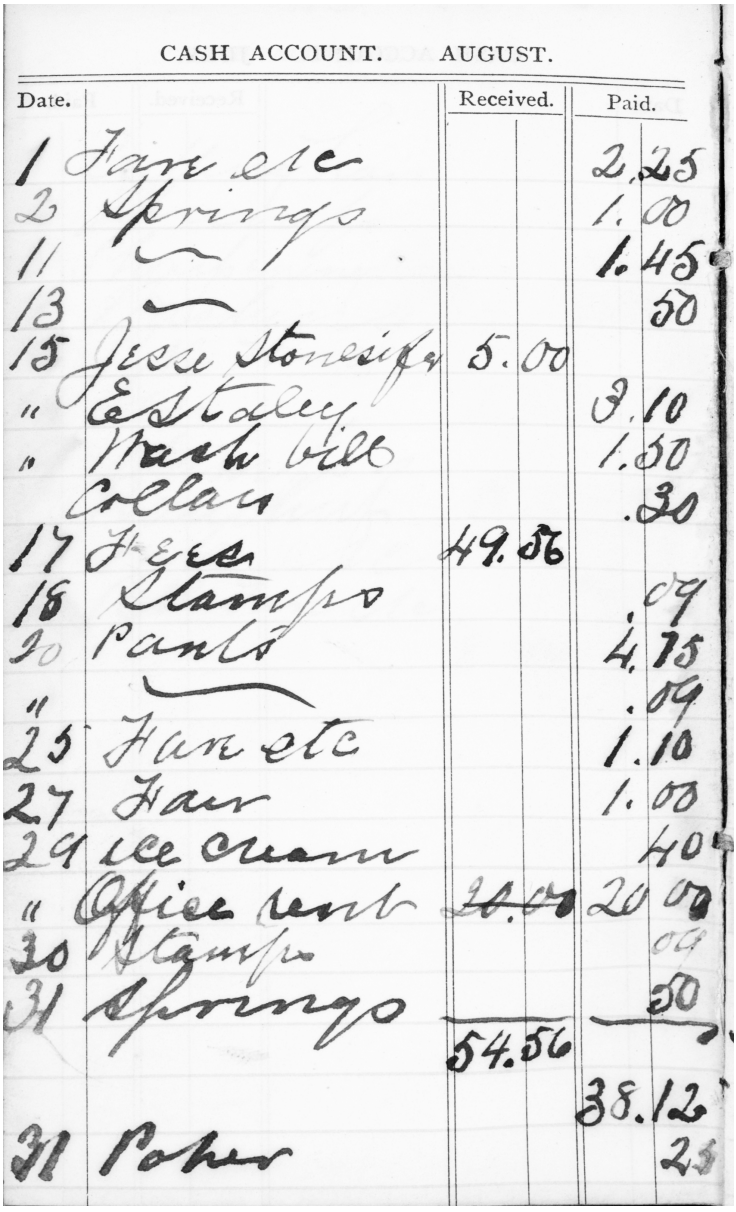
[11] This is the equivalent of approximately $133 in 2021.

[12] Purden's *Digest* is the standard nineteenth-century digest of Pennsylvania statutory law.



CASH ACCOUNT. AUGUST.

Date.		Received.	Paid.
1	Fare etc		2.25
2	Springs		1.00
11	"		1.45
13	"		50
15	Jesse Stonesifer	5.00	
"	E. Staley		9.10
"	Mash bill		1.50
	Collars		.30
17	Fees	49.56	
18	Stamps		.09
20	Pants		4.75
"	"		.09
25	Fare etc		1.10
27	Fare		1.00
29	Ice cream		.40
"	Office rent	~~20.00~~	20.00
30	Stamps		.09
31	Springs		.50
		54.56	
			38.12
31	Poker		.25

An anonymous lawyer's income and expenses for August 1881, as recorded in the lawyer's diary

CONCLUDING OBSERVATIONS

It is possible to dismiss my fascination with nineteenth-century lawyers' diaries as *mere* legal antiquarianism. But while it is true that these little record books do not generally provide the modern reader with great insights into the growth of the law, they do provide important insights into the growth of the legal profession and into the lives of ordinary lawyers.[13] They provide a supplement to what we can learn from the published diaries and memoirs of more celebrated legal luminaries like Joseph Story or Richard Henry Dana.[14]

The diaries I have discussed here provide a window into the lives of ordinary young lawyers in the nineteenth century. They give us the ability to understand a lawyer's "day in the life" – to see them buying letterhead and ink, a new collar or tie, buying and reading new books to entertain themselves and to deepen their legal knowledge, attending French lessons and operas, giving political speeches, and attending lectures and church. In short, these diaries let us understand what it was like to be a young lawyer more than a century ago.

[13] Christine Ann Fidler demonstrated how such diaries can be used to great advantage to reconstruct the lives of nineteenth-century law students in her brilliant doctoral dissertation. *See* CHRISTINE ANN FIDLER, "YOUNG LIMBS OF THE LAW": LAW STUDENTS, LEGAL EDUCATION, AND THE OCCUPATIONAL CULTURE OF ATTORNEYS, 1820-1860 (1996).

[14] *See, e.g.*, WILLIAM WETMORE STORY, LIFE AND LETTERS OF JOSEPH STORY: ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, AND DANE PROFESSOR OF LAW AT HARVARD UNIVERSITY (1851); ROBERT F. LUCID, THE JOURNAL OF RICHARD HENRY DANA, JR. (1968).