

# THE VANISHING COURT LIBRARY

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In September of 2010 the Judicial Conference approved a new “Strategic Plan” for the federal judiciary.<sup>1</sup> The Strategic Plan focused on seven issues or “fundamental policy questions and challenges . . . affecting the judiciary’s mission and core values.”<sup>2</sup> Issue 5 “Enhancing Access to the Judicial Process” outlined a two-fold strategy for ensuring that the judicial process remained “comprehensible, accessible and affordable.”<sup>3</sup>



First, it called on the judiciary to continue to “[e]nsure that court rules, processes and procedures meet the needs of lawyers and litigants in the judicial process.”<sup>4</sup> Second, it sought to “[e]nsure that the federal judiciary is open and accessible to those who participate in the judicial process.”<sup>5</sup> These are noble and important goals for a judiciary serving a democratic government. Unfortunately, action taken at the very same Judicial Conference meeting undermines these lofty aims. In September 2010, the Judicial Conference also voted to drastically scale back federal court libraries and library services. This short commentary explains why the federal court libraries play an important role in keeping the judicial process accessible and why the federal bar, especially its younger members, should care.

## ***The Ever Shrinking Federal Court Library System***

It was not long ago that the federal judiciary boasted “the world’s largest law book collection,” whose “2.8 million volumes dwarf[ed] even the collection of the

Library of Congress.”<sup>6</sup> To oversee this massive collection, the Judicial Conference, in response to a comprehensive report produced by the Federal Judicial Center, created the position of Director of Federal Court Libraries in the Administrative Office in 1979.<sup>7</sup> Following the creation of this position, the federal court library system continued to grow—adding at least 76 new librarian positions in the 1980’s.<sup>8</sup> And even as lawyers increasingly relied on electronic research tools,<sup>9</sup> the federal judiciary remained committed to maintaining its print collection. For example, in 1997, the Judicial Conference incorporated “functional requirements into the United States Courts Design Guide” that required satellite libraries to be “sufficiently large” and “encourage[d] the use of, and reaffirm[ed] the need for, shared use of space . . .”<sup>10</sup>

Regrettably, in the face of tightening fiscal policies that followed the bursting of the dot-com bubble and the Great Recession, the federal judiciary has increasingly placed its library system on the chopping block. In 2001, following “a comprehensive study of lawbook and library usage within the judiciary with an eye toward cutting costs” the Judicial Conference approved a number of recommendations including the adoption of “circuit-wide library committees and governance structures” to actively manage the lawbooks and library program of the judiciary.<sup>11</sup>

Such recommendations foreshadowed the more drastic recommendations to come, including the Judicial Conference’s 2010 decision to establish “guidelines to discourage” subscriptions to certain reporters and assess “the continuing need for each [satellite] library.” Since approving these recommendations, the federal court library system has been subjected to significant cuts. The Judicial Conference’s Court Administration and Case Management (CACM) Committee has reported significant cost reductions, including \$6.7 million in subscription cancellation in FY2013 as well

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as significant reductions in library space.<sup>12</sup> For example, the Third Circuit has reported that it expects to cut more than 60,000 square-feet of library space.<sup>13</sup> Perhaps more significantly, the Court system is losing its librarians, as budget cuts are also affecting staffing levels.

### ***Why Federal Court Libraries are Worth Preserving***

On the surface, the downsizing of the federal judiciary's library system seems both pragmatic and reasonable. Legal research is largely conducted on electronic databases, and thus visitation to law libraries has drastically decreased, along with the need to dedicate space for bookshelves.<sup>14</sup> As the members of the judiciary and their judicial clerks become more reliant on online resources, these resources have replaced the print materials. Unfortunately, the online research materials are not available for public use. This reduced access has occurred at a time that the practice of law has seen dramatic shifts, especially amongst young attorneys.

In recent years, the number of young attorneys entering solo practices or small firms has increased rapidly. In 2000, only 32.9% of law school graduates entering private practice either opened their own law practice or joined a small firm.<sup>15</sup> In 2013, that number increased to 47.5%.<sup>16</sup> It is this segment of the legal profession that relies heavily on public-access legal resources, and thus is directly affected by cuts in law library resources.<sup>17</sup> For example, solo practitioners and attorneys at small firms often lack resources that are available to their peers at large firms, including bulk discounts on online databases, like Westlaw and Lexis.

Solo practices and small firms are likely to pay more for searchers and have more limited electronic subscriptions. They are also less likely to maintain their own law libraries. Public library access to print treaties and law reporters makes it easier for them to provide effective legal counsel at reasonable rates.

While the access to legal materials has a more direct effect on solo and small firm practitioners directly, it is an issue that the entire bar should care about.<sup>18</sup> The justice system as a whole operates more efficiently and

effectively when all legal counsel (and through them their clients) has sufficient access to the necessary legal resources, and thus the federal judiciary's library system must be viewed as an essential tool in ensuring access to justice.<sup>19</sup>

### ***Conclusion***

The Federal Bar can, and should, work to preserve the remaining elements of the federal judiciary's library system. Recently, the library in the Robert T. Matsui U.S. Courthouse in Sacramento, CA dedicated a wing of the library to Anthony M. Kennedy Library and Learning Center.<sup>20</sup> It did so after partnering with the Sacramento Federal Judicial Library and Learning Center Foundation, a charitable non-profit public benefit corporation that can bring in private donations in support of the library's mission—"to promote the public's understanding of an independent judiciary, the rule of law in American society, and the rich history of the Sacramento area federal courts."<sup>21</sup> The model presented by the Sacramento Courthouse offers a way of raising the profile of the judicial libraries, but the Learning Center can only supplement the offerings of the government library. It cannot provide supplemental funds for core library functions. As a result, such a private funding model cannot replace the funding cuts placed on our libraries.

There is, however, an easier way that members of the federal bar can bolster this vanishing library system—simply use the remaining library facilities and resources, and ensure that members of the judiciary know that these resources are being utilized.

If it has not already been eliminated, the next time you are in federal court visit the court's library. Use the space to prepare for oral arguments. Ask the librarians what resources are available for your use. Or for that matter, visit the federal court library even if you don't have other business there. Talk to the librarians about the resources they have available, so the next time you have research questions, you know where to look. The federal judiciary and the federal bar, especially young attorneys, will rue the day that they let the federal court library system vanish without a fight.

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<sup>1</sup> Judicial Conference, *Strategic Plan for the Federal Judiciary* (2010), available at <http://www.uscourts.gov/uscourts/FederalCourts/Publications/StrategicPlan2010.pdf>.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 12–14.

<sup>6</sup> Federal Judicial Center, *Improving the Federal Court Library System: Report and Recommendations Submitted to the Judicial Conference of the United States*, Feb. 1978, available at [http://www.fjc.gov/public/pdf.nsf/lookup/imprvlib.pdf/\\$file/imprvlib.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/imprvlib.pdf/$file/imprvlib.pdf).

<sup>7</sup> Report of the Proceedings of the Judicial Conference of the United States (Mar. 1979).

<sup>8</sup> Report of the Proceedings of the Judicial Conference of the United States (Sept. 1981); Report of the Proceedings of the Judicial Conference of the United States (Sept. 1996).

<sup>9</sup> Report of the Proceedings of the Judicial Conference of the United States (Sept. 1996) (awarding a contract to Westlaw for “computer-assisted legal research” and Lexis-Nexis for “newspapers and journals categories.”).

<sup>10</sup> Report of the Proceedings of the Judicial Conference of the United States (Mar. 1997).

<sup>11</sup> Report of the Proceedings of the Judicial Conference of the United States (Sept./Oct. 2001).

<sup>12</sup> *Judiciary’s Cost-Containment Efforts*, USCOURTS.GOV, <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/annual-report-2013/judiciary-funding/judiciarys-cost-containment-efforts.aspx> (last visited March 4, 2015).

<sup>13</sup> THE THIRD BRANCH NEWS, *First Year of Space-Cutting Initiative Yields Major Successes*, Jan. 8 2015, available at <http://news.uscourts.gov/first-year-space-cutting-initiative-yields-major-successes>.

<sup>14</sup> See AM. ASS’N OF LAW LIBRARIES, LAW LIBRARIES AND ACCESS TO JUSTICE: A REPORT OF THE AMERICAN ASSOCIATION OF LAW LIBRARIES SPECIAL COMMITTEE ON ACCESS TO JUSTICE (July 2014), available at <http://www.aallnet.org/mm/Publications/products/atjwhitepaper.pdf> (“[T]hese libraries are serving not only the legal research needs of self-represented litigant patrons, but also those of solo practitioners and attorneys from small firms who cannot afford to pay for such services”) (“AALL 2014 Report”).

<sup>15</sup> NALP BULLETIN, *New Grads Find More Jobs for Second Year in a Row, But Not Enough More to Offset the Larger Class Size*, Aug. 2014, available at <http://www.nalp.org/0814research>.

<sup>16</sup> *Id.*

<sup>17</sup> Joseph D. Lawson, *What About the Majority? Considering the Legal Research Practices of Solo and Small Firm Attorneys*, 106 LAW LIBR. J. 377 (2014).

<sup>18</sup> See AALL 2014 Report.

<sup>19</sup> Lawson, *supra*, at 397.

<sup>20</sup> About the Sacramento Federal Judicial Library and Learning Center Foundation, SACJLC.ORG, <http://www.sacjlc.org/about-the-sfjll-foundation> (last visited Mar. 4, 2015).

<sup>21</sup> *Id.*