

The Twenty-First Century Law Library: A Law Firm Librarian's Thoughts*

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The author discusses issues facing firm librarians with reference to the article The Twenty-First Century Law Library, which appeared in the spring 2009 issue of Law Library Journal. Budgets, space, and training are all issues of concern to both academic and firm librarians, as is the importance of training digital natives to become lawyers.

Introduction

¶1 As a law firm librarian and a former academic law librarian, I enjoyed reading the conversation between Dick Danner, Blair Kauffman, and John Palfrey on the occasion of the dedication of Duke's new law library.¹ It provided a fascinating glimpse into what is foremost in the minds of some of the profession's best spokespeople. As a private law librarian, I thought I would share my own thoughts on the role of librarians and law libraries in the twenty-first century, and also respond to some of the points the speakers made or questions they raised about law firm budgets, law firm library space, and issues we all face with respect to training.

Law Firm Library Budgets

¶2 At several points in the conversation, Kauffman mentioned that law firm library budgets seemed shockingly high. For example, the average Am Law 200 law firm spends more on its library materials than does the entire Harvard Law Library.² With the caveat that I work in a mid-sized, regional law firm and not an Am Law 200 law firm I would like to attempt to explain how this could possibly be the case.³

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1. Richard A. Danner, S. Blair Kauffman & John G. Palfrey, *The Twenty-First Century Law Library*, 101 LAW LIBR. J. 143, 2009 LAW LIBR. J. 9.

2. *Id.* at 149–50, ¶ 32. *See also id.* at 148, ¶ 27.

3. Although I do not work at a large firm, I periodically meet with librarians who do and am familiar with their most vexing library issues.

Law Library Budgets for Electronic Resources

The Cost of Law Firm Contracts

¶3 Prior to working as a law librarian in private practice, I spent nine years at academic libraries. At the time I read *The Twenty-First Century Law Library*, I had a vague sense that firms were paying five to ten times more for LexisNexis and Westlaw than law schools were, and that most academic librarians were probably not aware just how much firms spend for comparable access. To verify this impression, I consulted both the *American Lawyer* survey⁴ and the AALL *Biennial Salary Survey*.⁵ I was dismayed to learn that the pricing discrepancies between the academic contracts and the law firm contracts were at or above the high end of my estimate, and that the statistics show the average firm pays ten times more for LexisNexis and Westlaw combined than law schools do. According to one survey, mean spending at the largest academic law libraries (650+ students) was \$250,000 for all electronic products in 2007.⁶ By contrast, in the private sector, average spending on LexisNexis and Westlaw in 2007 by the Am Law 200 firms was over \$3 million!⁷ This means law schools are receiving 90% discounts on their LexisNexis and Westlaw contracts.⁸ Academic libraries should get discounts, but should firms pay so much more? What is it, exactly, that firms are getting for all those millions of dollars? In many cases, less than you would think.

The Content of Law Firm Contracts

¶4 First of all, let me clarify that almost all of both the Am Law 200 and academic spending was for monthly payments under “flat-fee” contracts negotiated with vendors, and does not represent transactional or hourly searching. What is included in these flat-fee contracts? My sense is that law school contracts include most of the American materials available on LexisNexis and Westlaw. Many Am Law 200 firms have large contracts as well, but it may surprise some academic librarians and even some large-firm librarians to know that most law firm contracts do not include the full universe of Lexis and Westlaw materials and in many cases only include a sliver of available materials. Many firms have “basic” LexisNexis and Westlaw, which essentially consist of annotated primary U.S. law, citators, law

4. Alan Cohen, *Competitive Advantage: Business Intelligence—Finding, Analyzing, and Leveraging It—Reshapes the Role of Law Librarians*, Law Firm, Inc., July/Aug.2008, at 6, available at http://pdfserver.amlaw.com/lfi/LFI_LibrariansSurvey.pdf.

5. AM. ASS'N OF LAW LIBRARIES, THE AALL BIENNIAL SALARY SURVEY AND ORGANIZATIONAL CHARACTERISTICS 2007 (8th ed. 2007), available at http://www.aallnet.org/members/pub_salary07.asp (online version available to AALL members only) [hereinafter 2007 SALARY SURVEY].

6. *Id.* at 24 tbl.23. These figures include the cost of all electronic products in 2007—not just LexisNexis and Westlaw. Other vendors may be offering similar discounts to academic law libraries in order to promote their products.

7. Cohen, *supra* note 4, at 8.

8. This percentage comparison assumes that use in large law firms and large law schools is approximately equal. It is also worth noting that while the mean and median spending among law schools is relatively close (The median in 2007 was \$235,000. 2007 SALARY SURVEY, *supra* note 5, at 24 tbl.23.), there is a much larger difference in the law firm setting, where the median for LexisNexis and Westlaw spending is \$2.28 million. Cohen, *supra* note 4, at 8.

reviews back to 1980, and a relatively small number of secondary sources.⁹ These contracts do not include premier databases by top legal publishers, such as CCH, BNA, and RIA. Those materials are available separately at a higher cost. Law firms can still use the content outside their flat-fee contracts, but they pay for such excluded material at the retail rate, and it is over and above the monthly payments for flat-fee contracts.

The Value of Law Firm Contracts

¶5 What is a firm that spends over \$3 million on LexisNexis and Westlaw to do? For economic reasons as well as the wider availability of content elsewhere, many larger firms that have contracts for both LexisNexis and Westlaw are now considering moving to a preferred-provider model for their electronic legal research needs. In 2008, prior to the global economic collapse and recession, 12% of Am Law 200 firms were considering moving toward a single-vendor approach for electronic research within the next five years. By 2009, this number had risen to 31%.¹⁰

Print Budgets

¶6 The largest academic law libraries (650+ students) spent an average of \$1.2 million on print materials in 2007.¹¹ By contrast, the Am Law 200 firms spent an average of \$1.7 million.¹² It is true that firms do pay to provide duplicate materials in multiple offices, but they have much smaller collections than large law schools do. Because West no longer participates in the AALL *Price Index*,¹³ information about the price increases for individual print products in recent years is difficult to obtain. It is also not clear whether the pricing differences for firms and law schools that we see for electronic materials apply to print materials as well.¹⁴

¶7 West Library Maintenance Agreements (LMAs) used by academic libraries may partially account for the larger print budgets at law firms.¹⁵ Firms are less likely

9. See Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys*, 101 LAW LIBR. J. 297, 2009 LAW LIBR. J. 17, at 312, ¶ 47 (indicating that “only about 3.6%” of law firm “so-called ‘flat-rate’ contracts are actually unlimited in scope, or truly flat-rate”).

10. Alan Cohen, *Law Librarian Survey: No More Sacred Cows*, AM. LAWYER, Sept. 2009, at 51, 53. In an effort to address these issues, AALL ran a webinar in September 2009 entitled “Determining the Real Value of Your Information Contracts.” WEBINAR: Discovering the Real Value of Your Information Contracts, AALL Calendar of Events, <http://www.aallnet.org/calendar/eventdisplay.asp?eid=295&arc=no> (last visited Aug. 15, 2009).

11. Median spending was \$1.07 million. 2007 SALARY SURVEY, *supra* note 5, at 24 tbl.22.

12. Median spending was \$1.3 million. Cohen, *supra* note 4, at 8.

13. See AM. ASS'N OF LAW LIBRARIES, PRICE INDEX FOR LEGAL PUBLICATIONS (6th ed., 2008), http://www.aallnet.org/members/price_index-2008.asp (available to AALL members only).

14. On August 8, 2009, members of the PLL-SIS listserv received an email explaining West's non-participation in the *Price Index* and stating that West “approach[es] pricing on an account-by-account basis.” E-mail from Anne Ellis, Senior Director, Librarian Relations, Thomson Reuters to Private Law Libraries SIS (Aug. 7, 2009, 11:02 A.M. EST) (on file with author).

15. LMAs provide an annual price for a designated group of print publications to which a library subscribes. In exchange for lower annual price increases, the library agrees to maintain subscriptions to the print materials for a set number of years. See Amanda Runyon, *The Effect of Economics on Electronic Resources on the Traditional Law Library Print Collection*, 101 LAW LIBR. J. 177, 196–97, 2009 LAW LIBR. J. 11, ¶¶ 42–47 for a fuller discussion of library maintenance agreements in academic libraries.

than academic law libraries to participate in LMAs, as their collections are in greater flux than those of academic libraries due to the ebb and flow of popular practice groups within firms. Academic libraries may in this way be getting print discounts that firms cannot utilize, and vendors are willing to offer these discounts because LMAs, like flat-fee database contracts, benefit vendors' bottom lines because they are a form of "bundling."¹⁶

Space in Law Firm Libraries

¶8 In *The Twenty-First Century Law Library*, Blair Kaufmann says that "[o]ur deans and our faculty who visit law firms might get the impression as a partner tours them through that there's no longer a library . . ." ¹⁷ True! Law libraries can be hidden within internal spaces because they are no longer sprawl over one or two floors. He also wonders if we no longer need physical space because, unlike students, lawyers have offices.¹⁸ No—they still come to the library for three reasons: books, third places, and experts (us).

Books and Third Places

¶9 My firm recently moved, and while we cut back on our collection, we consolidated it so that our library is now all in one place, and my office is adjacent to the library. Like Stanford, usage of our "new" library has more than doubled.¹⁹ In fact, it has probably quadrupled. Book research in law firms is alive and well, but how long it will last, no one can say. Patrick Meyer's article in the summer 2009 issue of *Law Library Journal* contains an excellent discussion of the reasons why we still use books.²⁰ Additionally, Blair Kauffman is right that users can come to the library for a "green" way of doing research.²¹

¶10 Attorneys will also use the library in a firm as a third space, if it is well-designed.²² I am only half joking when I say that one of the finer points of law firm library design is having a back door through which attorneys can sneak without having to talk to a librarian.²³ Also important are tables that allow users to spread out and socialize—in my opinion, carrels do not work in a law firm setting. The compact shelving should be well-lit and marginally fun to use for those gadget-loving attorneys among us. Also, though they have offices, lawyers often need a

16. For a discussion of bundling, see Andrew Odlyzko, *The Bumpy Road of Electronic Commerce*, at 5 (unpublished paper, 1996), available at <http://www.dtc.umn.edu/~odlyzko/doc/bumpy.road.pdf>. In addition to "bundling," Odlyzko discusses other aspects of pricing, including differential pricing (pricing products differently for different customers). *Id.* at 7–8.

17. Danner, Kauffman & Palfrey, *supra* note 1, at 148, ¶ 26.

18. *Id.*, at 148 ¶ 27.

19. *See id.*, at 144, ¶ 9.

20. Meyer, *supra* note 9, at 314–16, ¶¶ 55–61; 319–20, ¶¶ 68–71.

21. *See* Danner, Kauffman & Palfrey, *supra* note 1, at 154, ¶ 67.

22. The challenge we all face going forward is convincing law schools and firms that creating smaller libraries is fine, but that they should be designed for people. *See* Bill Goodwyn, *ALA Conference 2009: Panel Focuses on Creating 'Zones with Heart'*, LIBRARY JOURNAL.COM, July 12, 2009, <http://www.libraryjournal.com/article/CA6670403.html>.

23. I want to thank the Philadelphia law firm librarians who pointed out some of these important details when my firm was planning its new space.

quiet place to think and to write difficult documents. Closing an office door does not necessarily keep visitors away, and libraries in firms continue to be a place for uninterrupted work.

Finding Experts

¶11 Finally, and most importantly, attorneys still come into the library (or “visit” via phone or e-mail) simply to consult an expert, either at the beginning of their research or after many fruitless hours. It is impossible to overstate the value of a librarian’s expertise to a firm, because that expertise is unique in the firm environment.²⁴ There are many attorneys, but only a few librarians. Especially now that much of the collection is invisible, finding an expert to guide one through databases or the remaining books is invaluable. The most valuable resource in the law library is the expert (you). I suspect the same is true in academia. An excellent way for firm librarians to market their libraries and raise awareness about their expertise is to participate in firm-wide training for new associates. Firm librarians should feel confident in their ability to teach substantive legal research skills to new attorneys because their unique combinations of knowledge, heuristics,²⁵ and experience add immense value

Training

¶12 In *The Twenty-First Century Law Library*, John Palfrey makes the point that academic law librarians need to be educators, training students to use both electronic and print resources.²⁶ This is true for firm librarians, as well. Perhaps the most complex issue firm law librarians face in the twenty-first century, even more complex than LexisNexis, Westlaw, web product, and LMA pricing, is the issue of training new lawyers to do excellent research.

Training in the Use of Electronic Products

¶13 To a large extent, firms and academic law libraries have similar training issues. We all buy expensive web products that will not see usage if we do not train students and attorneys to use them. As the price of these products escalates, we feel more and more pressure to make sure that our patrons use them. Training users is endless and requires thought, planning, and staffing. It requires more work than training people to use books because there are no visual markers. Helping young lawyers create a mental checklist of places to check when conducting research was

24. Firm librarians add intellectual diversity to the law firm environment because they have different sets of knowledge and problem-solving tools. For proof of the value of intellectual diversity in the workplace and a discussion of diverse intellectual toolboxes and their contents, see generally SCOTT PAGE, *THE DIFFERENCE—HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES* (2007).

25. *Id.* at 55. (“A heuristic is a rule applied to an existing solution represented in a perspective that generates a new (and hopefully better) solution or a new set of possible solutions.”).

26. Danner, Kauffman & Palfrey, *supra* note 1, at 152, ¶ 44 (“This comes back to the role of either the reference librarian or the student research assistant, which is to be guides to the things that we’re paying for . . .”); 156, ¶ 73 (“And also there is the question of the skills to use those books.”).

easier when the resources had a physical location in the reference department of a library (e.g., in the past we might have said, “The *Current Law Index* is red and black, and is to the left of the reference desk. The *Index to Legal Periodicals* is tan and follows the CLI.”). Furthermore, patrons are less receptive to training in general because they think they can find everything by using Google-type searches, whether in Google or non-Google sources.²⁷

Legal Research Training in General

¶14 I know academic librarians are very conscious of whether or not they are doing a good job training their law students to do legal research, and that firm librarians have expressed frustration with newer lawyers’ lack of research skills. I would recommend that law librarians involved in teaching or working with law students or new attorneys at both law schools and firms keep the following in mind: First, law schools should stop trying to determine “what” lawyers use and just continue to teach students to be familiar with every print and electronic resource for finding legal information that is available, because *attorneys in practice use all of them*.²⁸ How they use them depends on the experience of the attorney, the individual methods employed by the attorney,²⁹ and the question on which he or she is working, and should not preoccupy law librarians who are teaching legal research in law schools. Second, firm librarians should realize that much of what attorneys learn in law school will not be reinforced until it is applied in practice. After twelve years as both an academic and firm librarian, I am convinced that an attorney will not remember to use a product unless he or she has used it to answer an actual legal question.³⁰ Once an attorney has firsthand knowledge of a wide range of sources, he has a legal bibliography or checklist in his head, which he can

27. I often use Google first, and most frequently start with Google Scholar. I am delighted by the easy access to, and increased visibility of, HeinOnline and JSTOR content. A problem arises, though, when users try a Google-like search in, for example, LexisNexis or a controlled vocabulary or non-full-text database. For evidence on how the Internet may be changing our brains, see Nicholas Carr, *Is Google Making Us Stupid?*, ATLANTIC, July/Aug. 2008, at 56.

28. See generally Meyer, *supra* note 9, for an excellent and thorough discussion of what lawyers need to know in practice and how academic librarians can tweak their teaching to provide it. In my experience, attorneys use case law, statutes, regulations, ALR, restatements, legislative history documents of all types, encyclopedias, treatises, loose-leaf services, articles and their indexes, sample documents, forms, briefs, practice materials, digests, news, web pages, other attorneys, etc. They increasingly read and have access to material written by other attorneys who are marketing themselves (e.g., www.thecorporatecounsel.net and www.lexology.com are web sites that allow attorneys to submit content addressing current legal issues). If you can name it, you can be sure they use it.

29. The way attorneys use legal resources is limited only by imagination and ability. “[C]omplex tasks are nonroutine, unanalysable, involve processing equivocal information and evoke different approaches to information seeking than do tasks that are routine, analysable, and involve less equivocal information.” C. C. Kuhlthau & S.L. Tama, *Information Search Process of Lawyers: A Call for “Just for Me” Information Services*, 57 J. DOCUMENTATION 25, 27 (2001). It is important to remember that information seeking is only a preliminary activity to “the more significant endeavor of using information for constructing new knowledge to accomplish the tasks and goals that encompass their work.” *Id.* at 26. It is worth reminding ourselves that legal research is not all that attorneys do, and the amount of time spent doing it decreases with years of experience.

30. In my graduate program I was trained to do legal research using workbooks and exercises, and I think they are still a good idea. Academic libraries full of books are perfect learning labs.

consult (as librarians do) when confronted with a new research question. This attorney's research skills have risen to an advanced level—a level we may see in many experienced attorneys, but which I think it may be impossible to attain while in law school.

The Twenty-First Century: Conclusion

¶15 The twenty-first century holds similar and daunting challenges for both academic and firm law librarians. Pricing models for electronic resources are problematic at law firms,³¹ and prices for books are problematic for everyone, including vendors who are seeing the number of subscriptions drop. Libraries continue to need at least some “space” for the foreseeable future, but designing this space to continue to accommodate all types of library users (physical as well as virtual) presents new challenges. Our expertise continues to be highly valuable and contributes to intellectual diversity at firms and schools, and training digital natives to use intelligently both digital and non-digital materials continues to be a worthy—if difficult—task.³² Finally, perhaps our most important task going forward is to pass on our knowledge to a new generation of law librarians who were “born digital,”³³ because regardless of the form—or lack thereof³⁴—that legal information assumes in the next few decades, finding the “law,” and the written work of legal scholars, editors, and practicing attorneys who analyze it, will continue to remain necessary to the practice of law.

31. Prices for some electronic materials are also problematic at academic libraries, particularly databases supporting interdisciplinary faculty or empiricists. See Danner, Kauffman & Palfrey, *supra* note 1, at 150, ¶ 33; 153, ¶ 56 (questioning law school access to subscriptions of other schools or departments).

32. It is unfortunate that information literacy generally—being both difficult to teach and to attain, and so worthy of attainment—is not more often a part of the core curriculum at primary and secondary education levels. This would give us a stronger base for our instruction efforts.

33. I am borrowing this term from JOHN PALFREY & URS GASSER, *BORN DIGITAL: UNDERSTANDING THE FIRST GENERATION OF DIGITAL NATIVES* (2008).

34. For example, pages have already lost their meaning on the Kindle. See Nicholson Baker, *A New Page*, *NEW YORKER*, Aug. 3, 2009, at 24, 27. Will some of our favorite formats, including loose-leaf services and multi-volume scholarly treatises, become completely unsupportable in the legal publishing industry?