

## Research Incentive Fund Report

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The papers of Supreme Court Justices are significant to scholars of law, history, and government—and the American public. Our understanding of the Court and its decisions is enriched by access to the thinking of the justices. In turn, this knowledge informs our views on our laws and social order and helps shape the future of our legal, political, and even moral culture.

Despite the importance of these papers, many Justices who have donated their papers in the past 75 years or so have placed restrictions on access to the collection (others, or their family members, have simply destroyed their papers). These restrictions generally keep the papers closed until a certain amount of time has passed. This time period has been as brief as a few years and as prolonged as many decades, but the trend is toward restriction for longer periods of time.

The funds we received from InULA supported our travel to Chicago for back-to-back conferences at which we presented our research into the idiosyncracies of access restrictions imposed by the Justices, the effects these restrictions have on scholarship, and the many issues surrounding the question of whether preservation and access should be somehow mandated or incentivized by law. The first conference was the *Boulder Conference on Legal Information: Scholarship and Teaching*, hosted this year by Northwestern University Pritzker School of Law. This event, which provides a workshop for works-in-progress, allowed us to discuss our work and the resulting paper with two dozen law librarian scholars. One particular question that arose was: why are the Justices' papers, which are not official records of the Court in any way and do not represent the law, so valuable that we need to shift the boundary between private and public papers? Given the possibility of misconstruction and abuse, and the consequent possible chilling effect on the Justices' work, is access worth it? We will address this issue more carefully in our paper as a result of this conference.

The second conference was the *American Association of Law Libraries Annual Meeting*, where we presented a poster laying out the issues surrounding access to the Justices' papers. Seven timelines highlighted particular Justices whose choices regarding their papers from less restrictive (upon death) to more restrictive (50 years after death). The timelines, many of which ended in an unknown date, also helped illustrate the unpredictability that arises since time of death or retirement dates of colleagues are undeterminable until they occur. The poster prompted many stimulating conversations, including one with the librarians from the U.S. Supreme Court Library. Most people were surprised to learn that the Justices' papers were not already considered public property subject to preservation, retention, and use for research. Those who were already aware of the situation echoed concerns about privacy and chilling effects.

All in all, both conferences not only gave the chance to share our research but also provided feedback we can use to improve our work before publication. We are grateful to InULA for its support of this project, which will contribute to both the library and legal professions.

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