Selling the Law: The Business of Public Access to Court Records

Stephen Schultze and Shubham Mukherjee

Center for Information Technology Policy
Feb 5, 2009

Waiting For A Ruling

Summary judgment looms-Court resumes at 9AM CT Monday
Video of this week's court action in the Election Contest Trial Video Archive
Read Live Blog in a pop-up window here or below.
Trial Summary in a pop-up window here Also, please read our Live Blog FAQ.

Coleman v Franken Election Contest Day 06 LIVE!

12:30	**Matt Johnson**: Does anyone know how the "loser pays" policy works? Is it your own attorneys's plus court costs, plus opposing attorneys coset or is it all together or what?
12:30	**51stWardPrecinctCaptain**: Good question there Matt. I don't imagine one has to pay opposing counsel's fees --it's just a campaign expense, really
12:30	[Comment From pinkfloydfan001] Anonymous1: It's only good for Repiblicans to claim they were shut out of the process if the resulting legislation does not work.
12:31	[Comment From PalliOH] with the confirmation of the Coleman lead attorney working with and for the Swiftboatees... one would wonder how the mask stays on any of their faces?
12:31	[Comment From Uncle Geo] If Norm gets to keep leftover contributions maybe he can pay bills. But I suspect he's just fighting like the GOP does -relentlessly. Even in the midst of a financial crisis it was OK for Dems to vote for their bailout of their buddies on wall street but no votes at all for Obama's package. The message from the GOP is and always has been "We're right, you're wrong and we'll never cede an inch".
12:31	[Comment From Linda G] Better link Lenz
12:31	[Comment From lenzy1000] If Al lost he could write Rush Limbaugh is a big fat idiot part2. It would probably sell great right now.
12:32	**Grace Kelly**: In response to "seeds of doubt", if there is a lengthy complete court hearing, then wouldn't a court approval of election results give the Franken election greater credibility and greater standing?
12:32	[Comment From Mark Bannick]

Your Name: sjs

Send questions or comments

Send

Election Litigation 2008

Coleman et al v. Franken et al (62-CV-09-56)

Contacts

Filing Information, 651-266-8247

Trial Hours

Weekdays from 9 a.m. - 12 p.m. and 1 p.m. - 4:30 p.m.

Documents

- Order on Contestee's Motion in Limine to Limit Absentee-Ba Pleaded in the Notice of Contest (2-3-09)
- Stiputlation and Order Re: Absentee Ballots (2-3-09)
- Stipulated Order of Dismissal of Contestants' Claims Regard

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
ORDER FOR COPIES OF
CIVIL CASES

1. LOCATION
NARA Pacific Region, Riverside
Trust Fund Unit
Caller Service 8305, Perris, CA 92572-7298
Fax: (951) 956-2029

2. AREA SERVED
Southern California, Arizona, Clark County, Nevada

3. SELECT COPY PACKAGE (*select only one)*

Copy Package Not Certified	***Copy Package Certified***
☐ Entire Case File — **$70.00** ☐ Docket Sheet — **$25.00**	(Certification for fax copies is not available) ☐ Entire Case File Certified — **$85.00** ☐ Docket Sheet — **$40.00**

4. CASE INFORMATION (obtain from the court in which the case was filed)

COURT LOCATION (city & state)	CASE NAME(S)	CASE NUMBER
TRANSFER NUMBER	BOX NUMBER	LOCATION NUMBER

5. DELIVERY METHOD (select only one)

☐ Fax - 25 page limit ☐ Mail ☐ FedEx (additional $25.00) ☐ Charge Fed Ex Account - # _____

***6.* YOUR DELIVERY INFORMATION**

MAIL COPIES TO:	***FAX COPIES TO:***
NAME	FAX NUMBER
ADDRESS APT. # / SUITE #	
CITY	ATTENTION
STATE AND ZIP	
DAYTIME TELEPHONE NUMBER	DAYTIME TELEPHONE NUMBER

7. YOUR PAYMENT INFORMATION

Credit Card	***Check or Money Order***
CARD TYPE ☐ VISA ☐ MasterCard ☐ American Express ☐ Discover	Make your check or money order payable to:
ACCOUNT NUMBER EXPIRATION DATE	

Two Different Worlds

internet		card catalog
googlability	vs.	expert system
public access		clerical efficiency

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CAPITOL RECORDS, INC. et al., Plaintiffs, v. NOOR ALAUJAN, Defendant.	Civ. Act. No. 03-cv-11661-NG (LEAD DOCKET NUMBER)
SONY BMG MUSIC ENTERTAINMENT, et al. Plaintiffs, v. JOEL TENENBAUM Defendant.	Civ. Act. No. 07-cv-11446-NG (ORIGINAL DOCKET NUMBER) Oral Argument Requested

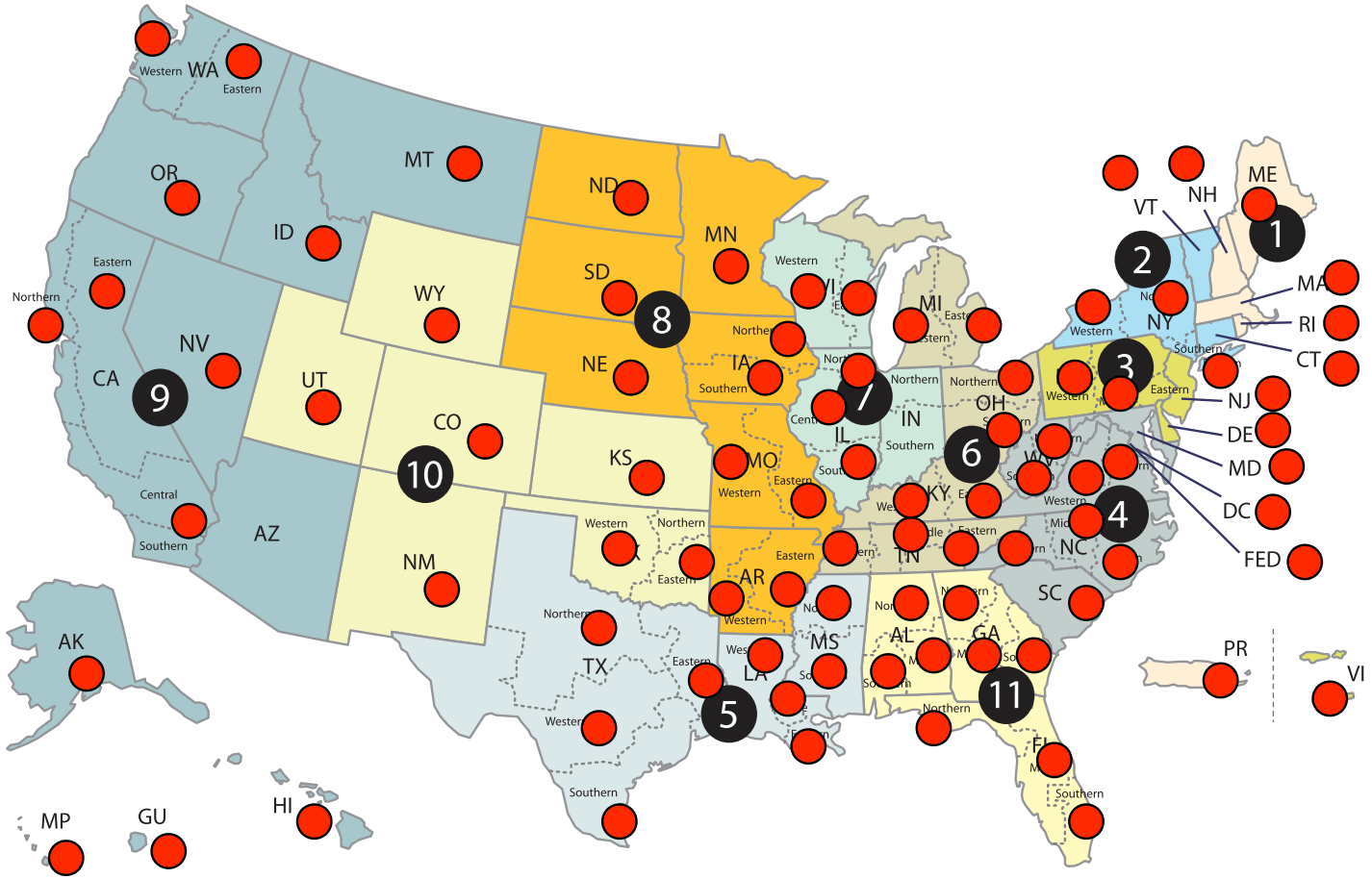
MOTION AND MEMORANDUM TO ADMIT
THE INTERNET INTO THE COURTROOM

The Goal

Make the law as *freely* and as *easily* accessible to the *public* as possible.

1. Democracy
2. Fairness
3. Consistency
4. Equality
5. Third-Party Innovation

US Federal District Courts



Welcome to the U.S. District Court for the Southern District of California

Southern District of California - Document Filing System

CM/ECF Live

System will be going down for maintenance at 4:30 am PST and will be up at 5:00 am PST every Wednesday.

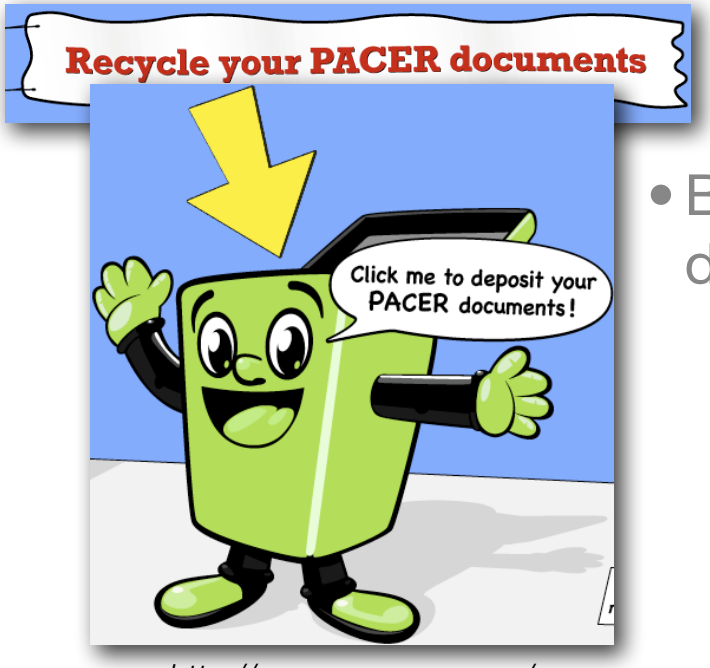
This facility is for Official Court Business only. Activity to and from this site is logged. Document filings on this system are subject to Federal Rule of Civil Procedure 11. Evidence of unauthorized or criminal activity will be forwarded to the appropriate law enforcement officials.

Welcome to the U.S. District Court for the Southern District of California Electronic Document Filing System. This page is for the use by attorneys and firms participating in the electronic filing system.

Orders can now be E-mailed to Chambers in MS Word format as well as WordPerfect format.

Reactions to PACER

- Veteran attorneys appreciate PACER in comparison to the hardcopy system of before.

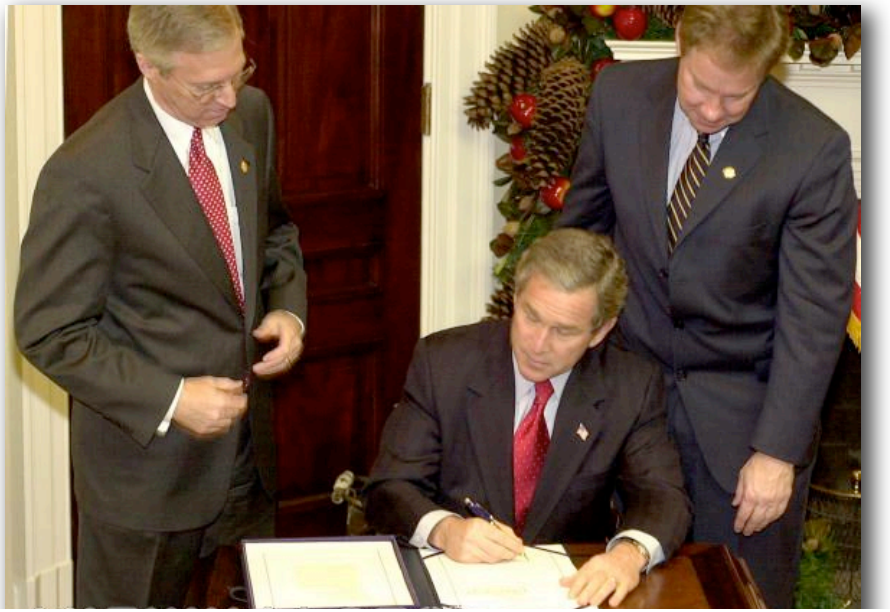


http://pacer.resource.org/

- But activists are seeking to liberate court documents from PACER, complaining of...
  - PACER's functional limitations, and
  - PACER's fees

The E-Government Act of 2002

- Passed to improve the quantity, efficiency, and accessibility of the federal government's electronic resources.
- Set forth requirements for federal agencies and the judiciary.

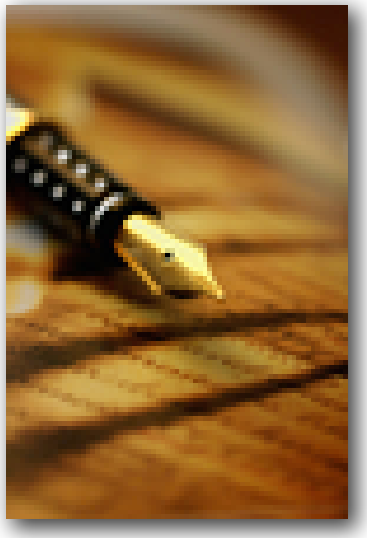


The E-Government Act's purposes

The bill says:

> To promote use of the Internet and other information technologies to provide increased opportunities for citizen participation in Government.

> To make the Federal Government more transparent and accountable.



The bill's sponsor said:

> To create a more citizen-oriented government.

Requirements for the judiciary

- provide access to **"*docket information*"** and **"*documents* filed with the courthouse" as well as "the substance of all ***written opinions*** issued by the court … ***in a text searchable format***";

- charge electronic public access ***fees "only to the extent necessary,"*** in contrast to then-existing law allowing the Judicial Conference to prescribe fees that it deemed "reasonable."

- take certain steps to protect privacy.

The purpose: *public* access to the courts

The Senate Report

> “Greater access to judicial information enhances opportunities for the ***public*** to become educated about their legal system and to ***research case-law***, and it improves ***access to the court system***.”

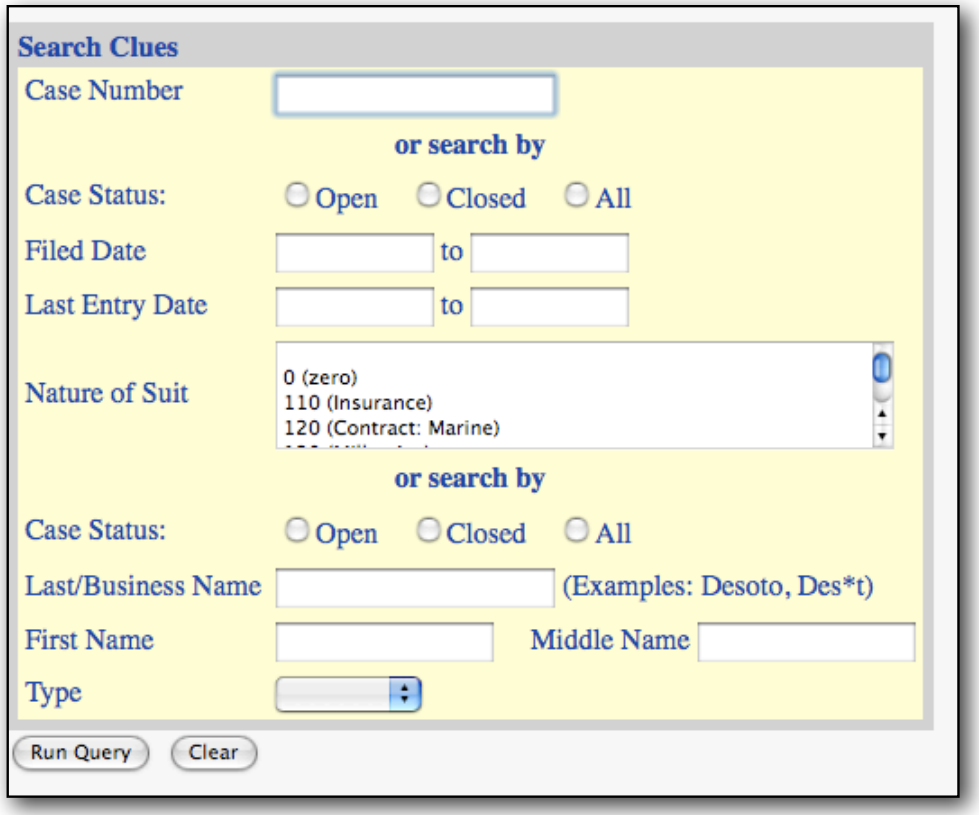
E-Government Act's "text searchable" directive

The requirement	• Courts must provide "access to the substance of all written opinions issued by the court … in a text searchable format."
Legislative intent	• No explicit interpretation from Congress. Presumably to serve the Act's stated goal of facilitating legal research by the public.
Common sense interpretation	• That the courts' opinions should be keyword-searchable so that the public can identify and retrieve opinions relevant to a topic of interest.

The judiciary's interpretation and the results

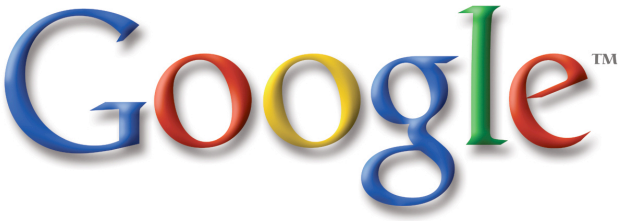
> A combination of CM/ECF and the PACER systems satisfies the minimum 'text searchable' requirement, as these systems allow for searching within a document.

- As a result, few courts have keyword searchable databases



PACER's search interface

Other functional limitations



- Courts keep the documents behind firewalls: **Google is powerless** to help.

- No coordination: each court's website must be **searched separately**.

A simple way forward

- Expose the documents from behind their firewalls and let private parties provide the search functionality.

E-Government's fee directive

The requirement

- § 205(e) of the Act amended then-existing law to state that "the Judicial Conference may, **only to the extent necessary**, prescribe reasonable fees [for PACER]."

Legislative intent

- "The [congressional] Committee intends to encourage the Judicial Conference to move from a fee structure in which electronic docketing systems are supported primarily by user fees to a fee structure in which this information is ***freely available to the greatest extent possible***."

- "Pursuant to existing law, users of PACER are charged fees that are ***higher than the marginal cost of disseminating the information***."

At the very least, the judiciary should not profit from PACER fees.

PACER profits - in millions

Costs

CENTRALLY OBLIGATED IT PROGRAM COMPONENTS	*FY 2006*
Courtroom Technology Program	$ 7.1
Emergency Preparedness	$ 2.9
Electronic Public Access Program	$ 11.6
Probation and Pretrial Services	$ 9.3
Infrastructure and Collaboration Tools	$ 36.9
Telecommunications Program	$ 27.0
Reimburseable Program	$ 22.8
Non-Mandatory Users	$ 0.1
Total Obligations	**$ 174.8**

Court Administration and Case Management Systems: $16.0

Electronic Public Access Program: $11.6

The PACER Service Center (PSC) provides centralized billing, registration, and technical support services for the Judiciary and the public. PACER registrations reached a new milestone during 2007, surpassing 750,000 user accounts. ... cations would be directed to the courts. The operational cost of the PSC has consistently remained a small fraction of the revenue—in 2007, only 4.52 percent.

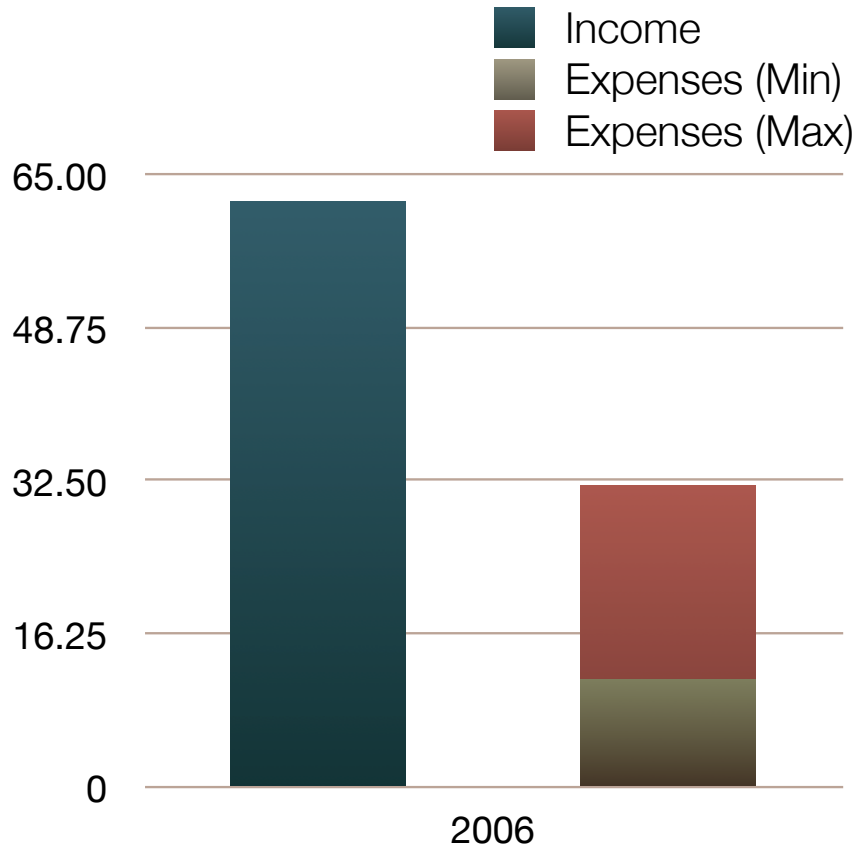
"PACER Service Center": $2.9

Revenue

FY 2006 Total Available Funding From All Sources ($ Millions)	
Deposits from Salaries and Expenses Account	$260.0
Unobligated Balances from Prior Year	$98.4
Deposits from Courts	$26.2
Deposits from Non-Mandatory Users	$0.9
Total Available	**$447.8**

Fee Collections from Electronic Public Access: $62.3

PACER profits - in millions



“Unobligated Balances”

- In 2007, the judiciary observed *“[a] **significant accumulation of unobligated balances**, which in large measure reflects the cumulative results of cost-containment initiatives **and the success of the CM/ECF system** in the district and bankruptcy courts. It adopted a **multi-part strategy to reduce future unobligated balances**, including expanding the use of Electronic Public Access funds …*

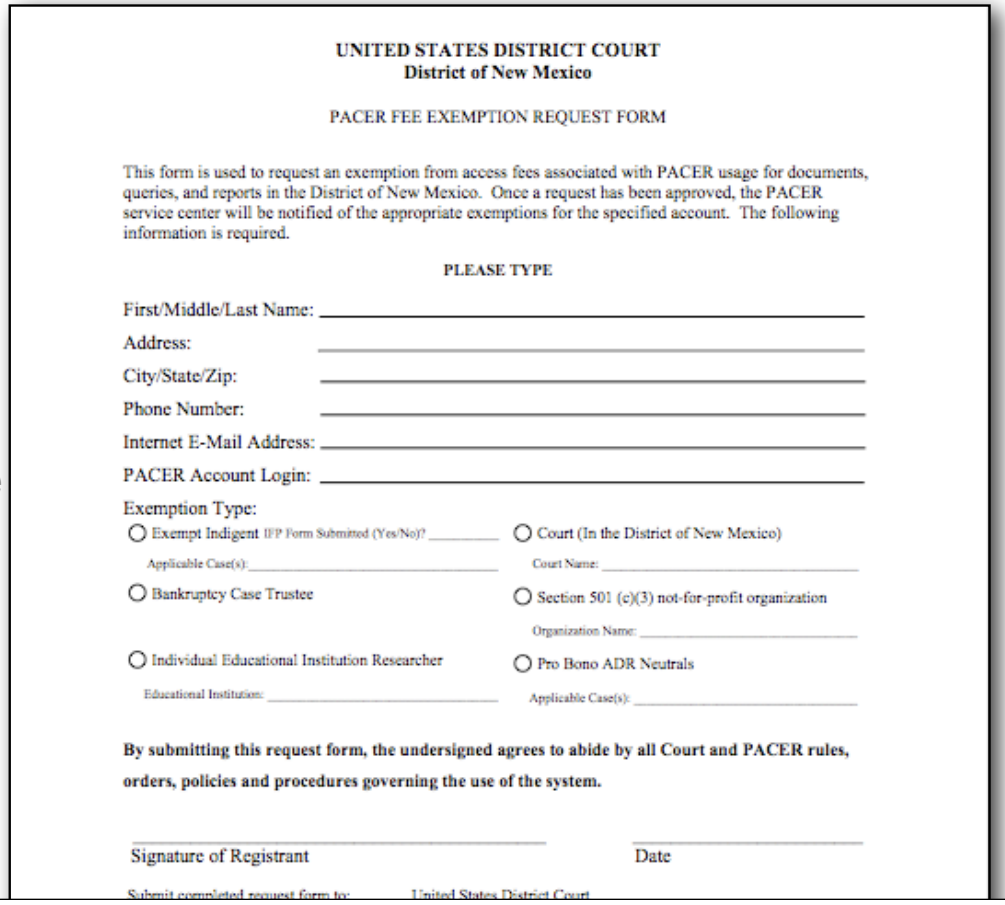
I.e., PACER generated more money than the judiciary knew what to do with.

Fee exemptions

- The judiciary allows judges to grant fee exemptions on a case by case basis for groups like indigents, individual researchers associated with educational institutions, non-profits, and *pro bono* attorneys

- But you must file a request with the judge -- for each court and each case for which you want access -- and await authorization.

- Judges are instructed that "exemptions should be granted as the exception, not the rule."



UNITED STATES DISTRICT COURT
District of New Mexico

PACER FEE EXEMPTION REQUEST FORM

This form is used to request an exemption from access fees associated with PACER usage for documents, queries, and reports in the District of New Mexico. Once a request has been approved, the PACER service center will be notified of the appropriate exemptions for the specified account. The following information is required.

PLEASE TYPE

First/Middle/Last Name: _____

Address: _____

City/State/Zip: _____

Phone Number: _____

Internet E-Mail Address: _____

PACER Account Login: _____

Exemption Type:

○ Exempt Indigent IFP Form Submitted (Yes/No)? _____
Applicable Case(s): _____

○ Court (In the District of New Mexico)
Court Name: _____

○ Bankruptcy Case Trustee

○ Section 501 (c)(3) not-for-profit organization
Organization Name: _____

○ Individual Educational Institution Researcher
Educational Institution: _____

○ Pro Bono ADR Neutrals
Applicable Case(s): _____

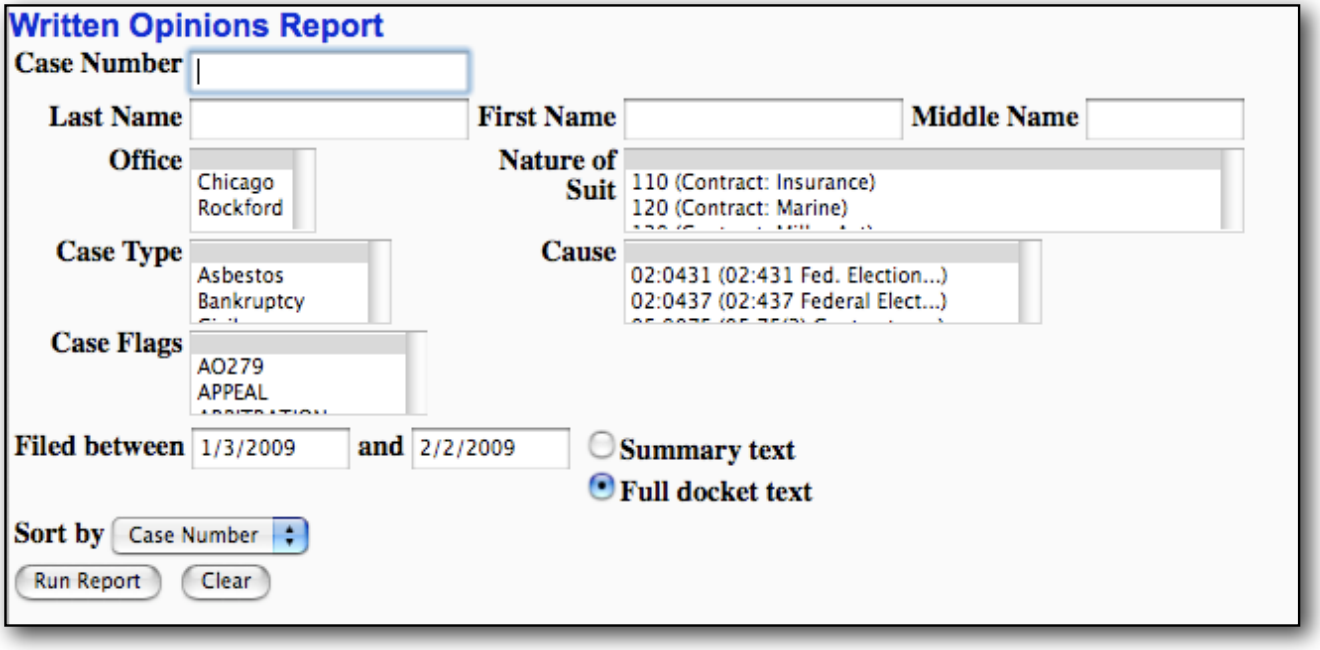
By submitting this request form, the undersigned agrees to abide by all Court and PACER rules, orders, policies and procedures governing the use of the system.

_____ _____
Signature of Registrant Date

Submit completed request form to: United States District Court

“Free” written opinions

“**In the spirit of the E-Government Act of 2002**, modifications have been made to the District Court CM/ECF system to provide PACER customers with **access to written opinions free of charge.** The modifications also allow PACER customers to search for written opinions using a new report that is free of charge.”



ECF Opinion Report Audit*

alnd	0.00%
iasd	0.00%
nmd	0.00%
nmid	0.00%
mdd	7.41%
mad	8.70%
prd	16.95%
txwd	19.23%
vid	34.48%
gand	43.08%
mtd	45.45%
tnwd	45.83%

akd	50.00%
wyd	50.00%
flsd	50.55%
flmd	53.50%
nysd	60.58%
scd	63.46%
ctd	65.56%
nced	66.07%
mowd	67.65%
vaed	70.49%
wvsd	71.88%
nynd	74.04%

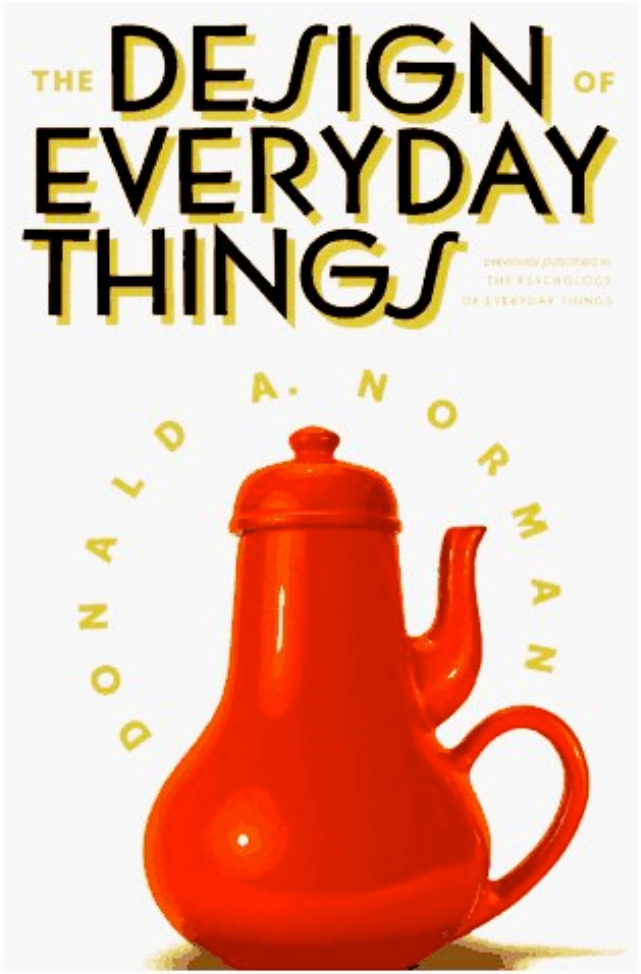
* preliminary numbers, subject to minor corrections

Other functional problems

the PACER servers are configured to re-charge you each time you load a page (or even click “back” in your browser)

PACER Service Center			
Transaction Receipt			
02/04/2009 15:24:03			
PACER Login:	ss7288	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	1:03-cv-11661-NG
Billable Pages:	30	**Cost:**	2.40

User-Centered Design

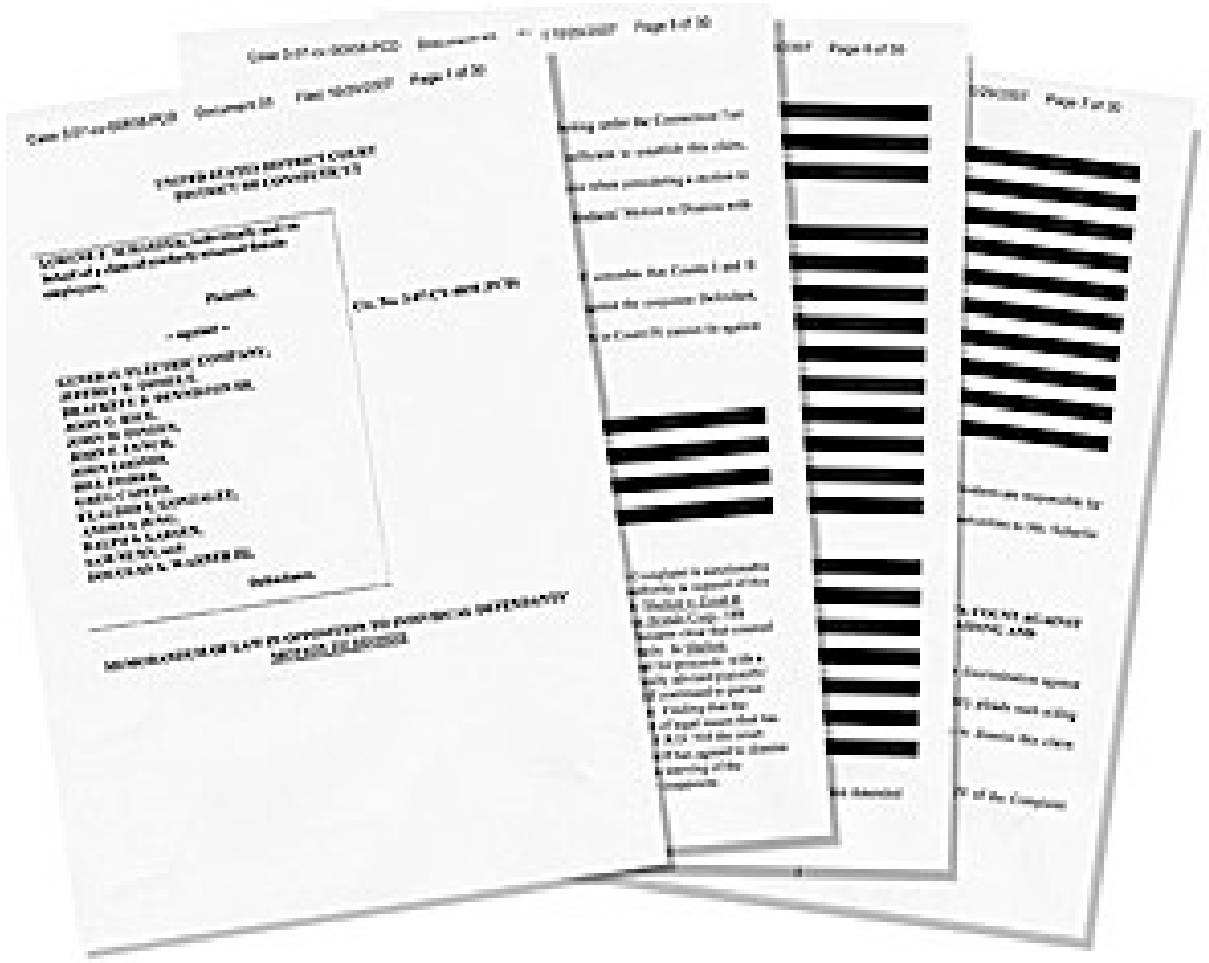


Barriers to Open Access

Privacy

Cost

Privacy



Cost

Lines of Business	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Court Administration and Case Management Systems	21.0	20.0	21.2	22.4	23.5
Judicial Statistical and Reporting Systems	4.2	4.3	4.6	4.8	5.0
Courtroom Technology Program	3.8	11.5	12.2	12.9	13.5
Electronic Public Access Program	30.7	25.6	27.1	28.6	30.1

Opportunities to Reform

Change in Administration's Tone, CTO

Reanimated E-Government Reauthorization?

A new PACER

Direct Activism