

Open Access to Government Documents

...or, "Federal Court Documents: Even Google Can't Find Them"

Steve Schultze
Fellow, Berkman Center
Oct 14, 2008

The Law

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17 U.S.C. 105

Three Snapshots

- Congressional Research Service (CRS)
- Oregon State Codes
- Public Access to Court Electronic Records (PACER)



CRS Reports:

Memorandum

April 18, 2007

TO: All CRS Staff

FROM: Daniel P. Mulhollen
Director 

SUBJECT: Access to CRS Reports

What is the rationale for CRS providing its work solely to the Congress? Three broad concerns go to the heart of the existing policy: impairment of the performance of Members' representational role, risk to confidentiality, and impact on the mission and congressional focus that characterizes our efforts. These issues also inform our policies on furnishing products to individuals outside Congress and our guidelines on staff interactions with the media.

CRS Reports



PH
Penny Hill Press

*An informed citizenry
is the bulwark of a
democracy.*

-Thomas Jefferson

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October 06, 2008 - Supreme Court Appellate Jurisdiction Over Military Court Cases

October 03, 2008 - Income and Poverty Among Older Americans In 2006

Oregon State Codes



PACER:



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.

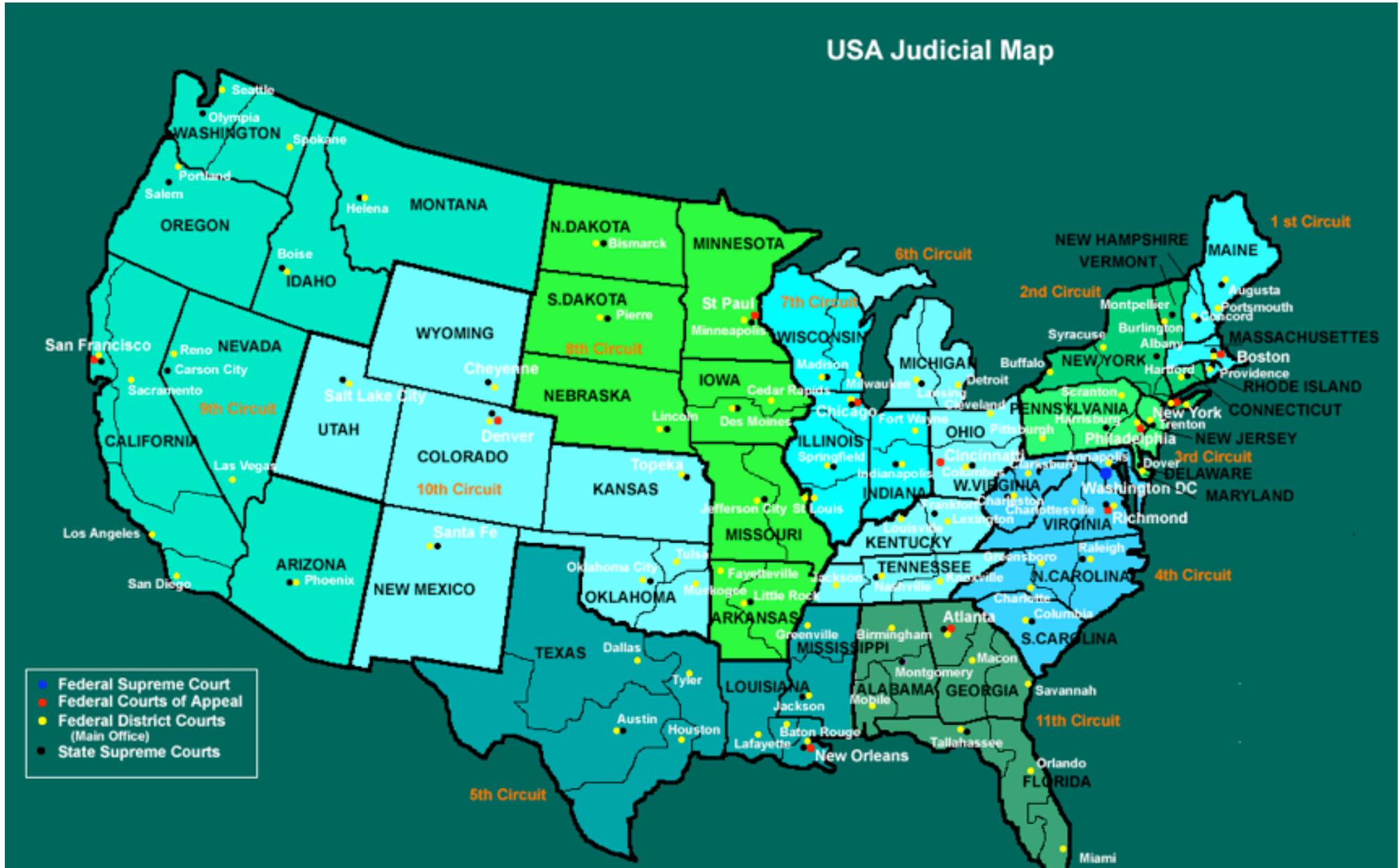
Common Themes

- delegation of authority
- cost recovery
- creation of downstream monopolies/control

PACER Fee Chronology

- 1990: PACER dial-up access at \$1/minute
- 1998: PACER web access at \$.07/page
- 2002: E-Government Act
- 2004: Fee increase to \$.08/page
- 2006: \$100M JITF surplus, ban on any transfer of fee-exempt documents
- 2007: No-Fee library access trial

How is PACER designed technically?



How Has This Changed?

- Administrative Office of the U.S. Courts "Annual Report of the Director" 2006: "The Centralized Authentication Project (CAP) was incorporated into CM/ECF. CAP improves system security by allowing the Judiciary to authenticate PACER users at one of two national gateways rather than distributing the PACER passwords to each site."
- Only two data centers: Reston and Kansas
- But still 188 different servers, running one of 10 different versions of the software

Cracks in the Dam



Cracks in the Dam

- PACER Recycling
- IP Litigation Clearinghouse, Civil Rights Litigation Clearinghouse
- Justia
- Court Web Sites
- Google
- E-Government Act of 2002
- No-Fee PACER Access at 16 Federal Depository Libraries

The E-Government Act of 2002

§205, in relevant part, states:

(a) INDIVIDUAL COURT WEBSITES- The Chief Justice of the United States, the chief judge of each circuit and district and of the Court of Federal Claims, and the chief bankruptcy judge of each district shall cause to be established and maintained, for the court of which the judge is chief justice or judge, a website that contains the following information or links to websites with the following information:

(4) Access to docket information for each case.

(5) Access to the substance of all written opinions issued by the court, regardless of whether such opinions are to be published in the official court reporter, in a text searchable format

(6) Access to documents filed with the courthouse in electronic form, to the extent provided under subsection (c).

The E-Government Act of 2002

(e) COST OF PROVIDING ELECTRONIC DOCKETING INFORMATION- Section 303(a) of the Judiciary Appropriations Act, 1992 (105 stat 810, codified in 28 U.S.C. 1913 note) is amended in the first sentence by striking '**shall hereafter**' and inserting '**may, only to the extent necessary,**'.

With section (e)'s amendment, the overall wording of the law is:

“303(a): The Judicial Conference may, only to the extent necessary, prescribe reasonable fees, pursuant to sections 1913, 1914, 1926, 1930, and 1932 of title 28, United States Code, for collection by the courts under those sections for access to information available through automatic data processing equipment. These fees may distinguish between classes of persons, and shall provide for exempting persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. The Director of the Administrative Office of the United States Courts, under the direction of the Judicial Conference of the United States, shall prescribe a schedule of reasonable fees for electronic access to information which the Director is required to maintain and make available to the public.”

How the Judiciary Has Reacted to the Act

"As directed by Congress, the Judicial Conference has determined that the following fees are necessary to reimburse expenses incurred by the judiciary in providing electronic public access to court records." (emphasis added)."

"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. Written opinions have been defined by the Judicial Conference as 'any document issued by a judge or judges of the court sitting in that capacity, that sets forth a reasoned explanation for a court's decision.' The responsibility for determining which documents meet this definition rests with the authoring judge."

What Congress Said When It Passed the Act

“The 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. For example, the Administrative Office of the United States Courts operates an electronic public access service, known as PACER, that allows users to obtain case and docket information from Federal Appellate, District and Bankruptcy courts, and from the U.S. Party/Case Index. Pursuant to existing law, users of PACER are charged fees that are higher than the marginal cost of disseminating the information.”

The Hyperlaw Letter

- **Barriers To Access Easily Resolved Within CM/ECF**
- **Completeness and Suitability of Opinions Selected**
 - Not All Judicial Opinions are Identified and Included in Written Opinions
 - Routine Orders Inappropriately Identified as Written Opinions and Included in the Written Opinions Reports
 - In General, No Focused Responsibility for Completeness of the Written Opinions Report
 - Not All Opinions are Searchable
- **Accessibility by Search Engines**
 - The Opinions Designated in the Written Opinions and Some Court Web Site Opinions Are Hidden Behind Firewalls
 - No Public File Name Assigned To the Opinion Files
 - Metadata in Header Not Used Uniformly

May 7, 2008

No-Fee FDLP Access

- AALL Resolution

WHEREAS, Providing PACER to users of depository libraries at no-fee will increase greatly access by the public to important federal court information and strengthen the collaboration between GPO, the federal courts, depository libraries and the public which is the very essence of the FDLP partnership; now, therefore, be it

RESOLVED, That the U.S. Government Printing Office should negotiate with the Administrative Office of the U.S. Courts to make the PACER system available at no cost to users of federal depository libraries;

- Judicial Conference approved 17 trial FDLP libraries in 2007
- goal: "...to determine if Federal depository library access to PACER expands

What the Judiciary Giveth, The Judiciary Taketh Away

Sep 30, 2008 -- "GPO and the Administrative Office of the United States Courts undertook a pilot to provide free public access to Federal court records at 17 Federal depository libraries through (PACER) ... The pilot has been suspended, pending an evaluation. Once the evaluation is complete, the judiciary and the GPO will determine what steps need to be taken in order to move forward. The pilot is part of GPO's efforts to increase public access to government information as well as the judiciary's continuing effort to expand public access to court records."

Barriers to Open Access

- Privacy
- Integrity
- Cost
- Inertia

Integrity

remixing the law?

Cost: JITF Report 2006

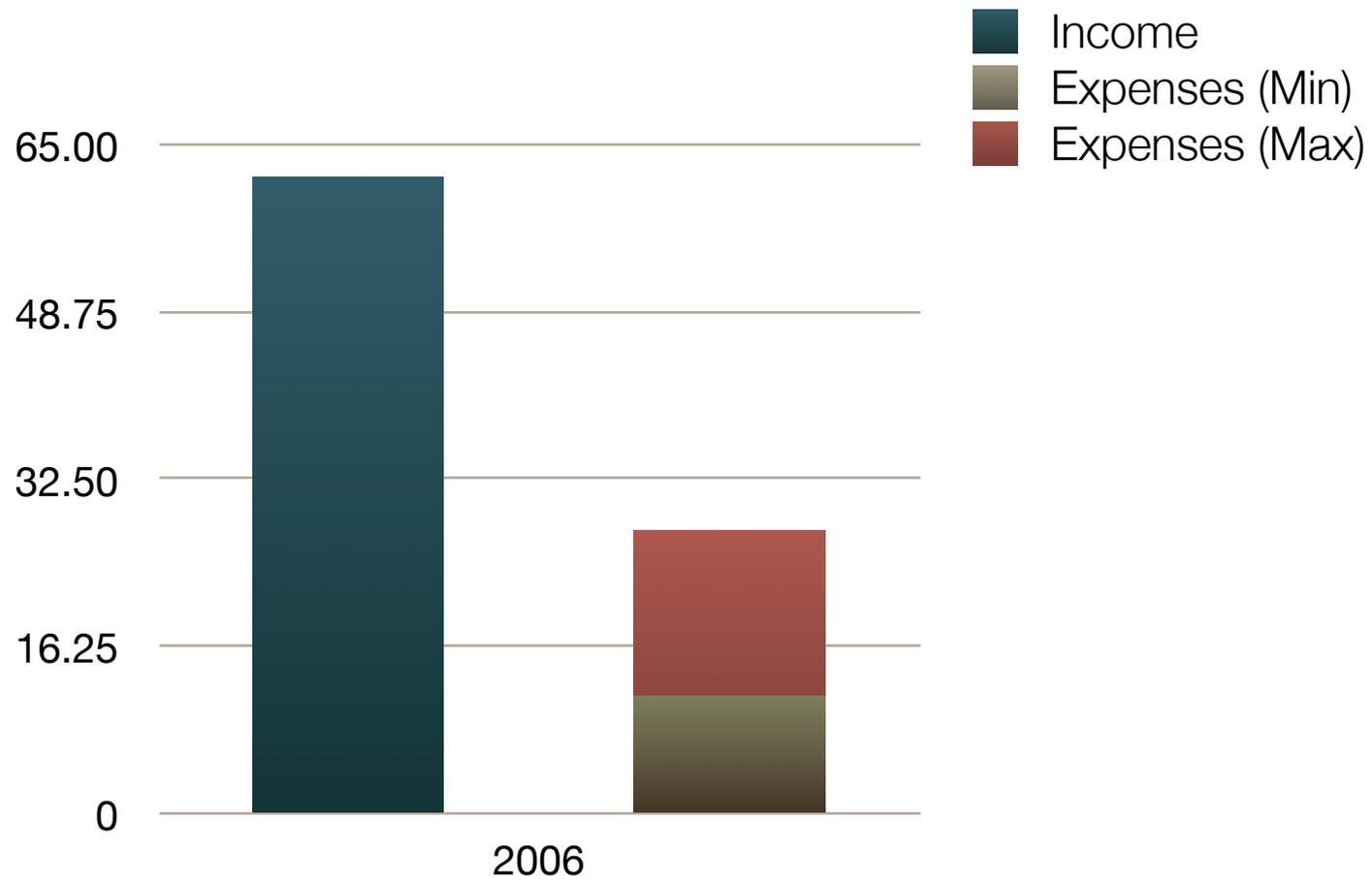
FY 2006 Total Available Funding From All Sources (\$ Millions)

Deposits from Salaries and Expenses Account	\$260.0
Fee Collections from Electronic Public Access	\$62.3
Unobligated Balances from Prior Year	\$98.4
Deposits from Courts	\$26.2
Deposits from Non-Mandatory Users	\$0.9
Total Available	\$447.8

JITF Report 2006

<i>CENTRALLY OBLIGATED IT PROGRAM COMPONENTS (\$ in Millions)</i>	<i>FY 2006 OBLIGATIONS</i>
Court Administration and Case Management Systems	\$ 16.0
Judicial Statistical and Reporting Systems	\$ 2.4
Courtroom Technology Program	\$ 7.1
Emergency Preparedness	\$ 2.9
Electronic Public Access Program	\$ 11.6
Probation and Pretrial Services	\$ 9.3
Financial Systems	\$ 16.5
Human Resources Systems	\$ 12.5
Management Information Systems	\$ 9.7
Infrastructure and Collaboration Tools	\$ 36.9
Telecommunications Program	\$ 27.0
Reimbursable Program	\$ 22.8
Non-Mandatory Users	\$ 0.1
Total Obligations	\$ 174.8

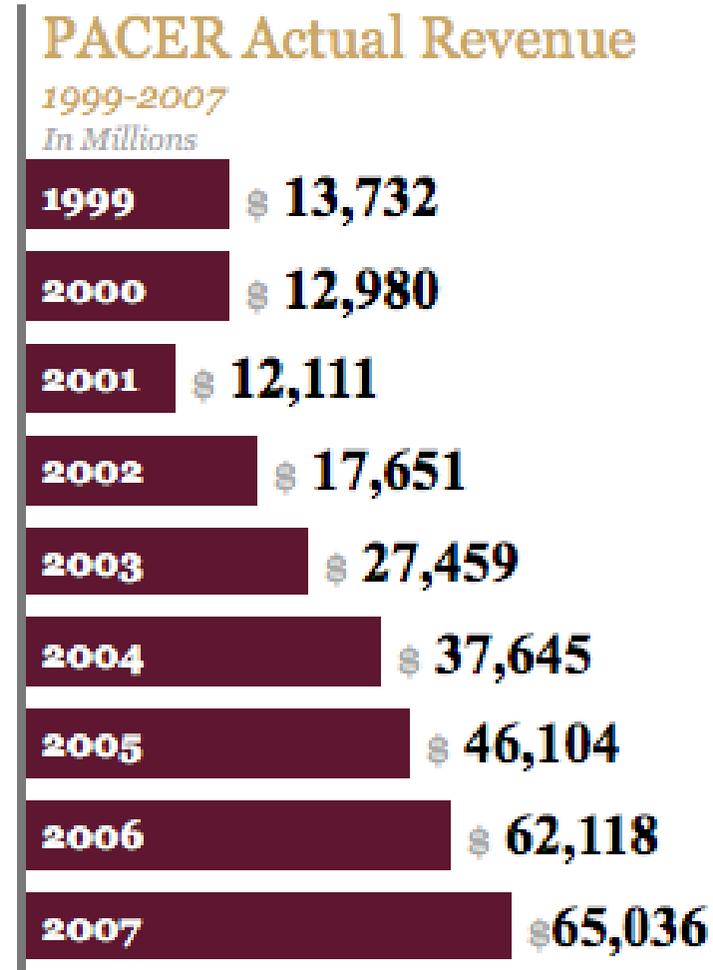
What Money Goes Where?



2007 Administrative Office Annual Report

- "The operational cost of the P[acer] S[ervice] C[enter] has consistently remained a small fraction of the revenue—in 2007, only 4.52 percent."

- 4.52% of 65 is 2.9



Long Range Plan for Information Technology in the Federal Judiciary 2008 - Projected Costs

	Current Estimate (Dollars In Millions)				
Lines of Business	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Court Administration and					

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

Infrastructure and Collaboration Tools	65.9	69.4	75.6	77.6	81.5
Telecommunications Program	54.0	56.5	59.9	63.2	66.4
Court Support	27.6	28.3	30.0	31.6	33.2
TOTAL JTF Financial Requirements	411.1	432.4	458.3	483.5	507.7

Alternative Cost Recovery Mechanisms

- How much cost recovery is warranted?
- How much cost goes away with open access?
- Congressional support?
- Enterprise services?
- Sponsorship?
- Funding from elsewhere in the Judiciary's budget?

Inertia



Committee on Information Technology

- The Committee on Information Technology reported that it reviewed the Judiciary Information Technology Fund Annual Report, which describes sources of funds, obligations, and unobligated balances. The Committee focused on the **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. - March 13, 2007



Judge Rosemary M. Collyer (D. D.C.)

Office of Information Technology



Howard Grandier, Assistant Director for
the Office of Information Technology (OIT)

Committee on Court Administration and Case Management

- Next meeting: December 2008



Judge John R. Tunheim (D. Minn.)

Electronic Public Access Working Group

- "This is a group of judges, clerks and court technology personnel that was formed specifically to address electronic public access issues."
- Next Meeting: October 2008
- Requested materials by Sep 24, 2008

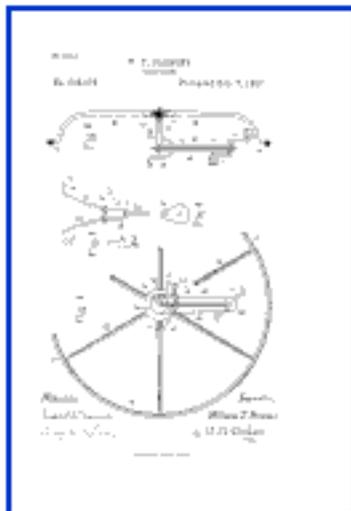
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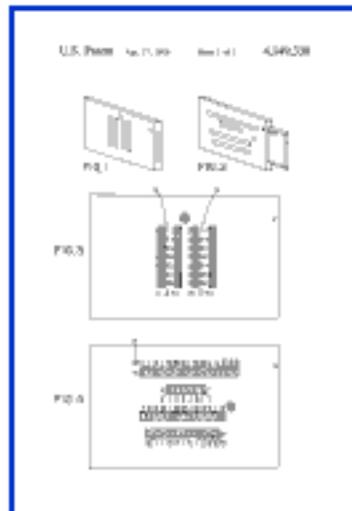
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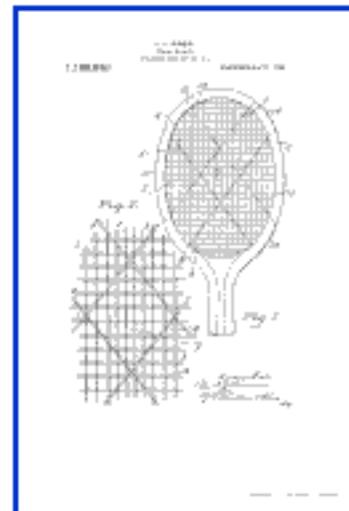
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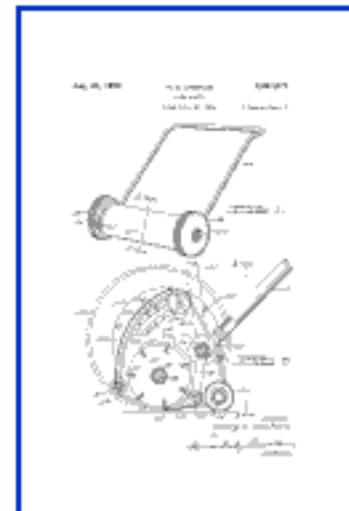
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