

Access to Federal Lower Court Opinions

Public Access to the Law in the YaOogle Age, J-3
American Association of Law Libraries Annual Meeting
Washington D.C. July 28, 2009

Alan D. Sugarman, Esq.
HyperLaw, Inc.

www.hyperlaw.com
sugarman@sugarlaw.com

GOOD AFTERNOON

I AM ALAN SUGARMAN

I WILL BE FOCUSING ON CASE LAW OF THE U.S. DISTRICT
COURTS ...

THE LARGEST SIGNIFICANT BODY OF LAW STILL NOT
ACCESSIBLE ON THE INTERNET.

Summary

- Define Access, ECF, and Pacer
- History: John West to FLITE to Juris
- E-Government Act of 2002 and FRAP 32.1
- Judiciary Response - ECF Written Opinions
- Vaporlaw
- Opinion and Citation Metadata
- Metadata in PDF Files and Google Searches
- What Law Librarians Can Do

Note: Slides available at HyperLaw.com.

2

WE WILL BE COVERING THESE TOPICS THIS AFTERNOON.

I WILL NOT BE COVERING ALL OF THE SLIDES IN THE HANDOUT PROVIDED TODAY - SO THAT I MAY FINISH IN TIME.

THE SLIDES I WILL SKIP ARE MARKED WITH A SQUARE IN THE CORNER.

Defining “Access” and “Available: As To Judicial Opinions

- Locate specific opinion by cite information
- Accessible to search engines
- Searchable text
- Persistent location and file name
- Free
- Open access to aggregators
- Search across multiple courts
- Metadata in opinion document or xml file

3

FIRST, I WISH TO DEFINE THE TERMS “ACCESS” AND
“AVAILABLE.”

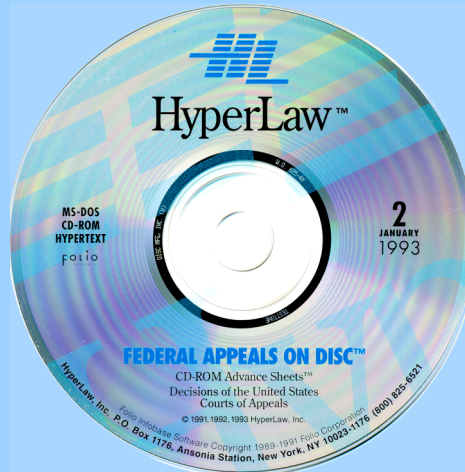
THE MOST IMPORTANT ASPECT IS TO BE ABLE TO LOCATE A
SPECIFIC OPINION IMMEDIATELY.

AVAILABLE DOES NOT MERELY MEAN THAT SOMEHOW THE
OPINION MAY BE FOUND ON THE INTERNET
WITH SUFFICIENT DILLIGENCE AND MONEY.

ADDITIONAL NOTES:

PPA - PERMANENT PUBLIC LOCATION

HyperLaw's Federal Appeals CD Rom 1993



4

IN 1993. MY COMPANY HYPERLAW EXHIBITED AT THE AALL ANNUAL MEETING HELD IN BOSTON .

THERE WE INTRODUCED THE FIRST CD ROM EVER OF OPINIONS OF THE U.S. COURTS OF APPEALS.

THIS WAS POSSIBLE ONLY BECAUSE THOSE APPELLATE COURTS HAD MADE THEIR OPINIONS AVAILABLE FOR FREE VIA DIAL UP MODEMS.

16 YEARS LATER, IT WOULD NOT BE POSSIBLE TO PUBLISH A SIMILAR CD-ROM OF DISTRICT COURT OPINIONS.

ADDITIONAL NOTES:

BY 1996, WE WERE COLLECTING TEN THOUSAND OPINIONS A YEAR.

AFTERWARDS, THE LAW SCHOOLS AND THEN THE COURTS MADE THESE OPINIONS AVAILABLE ON THE WEB,

WEST THREATENED HYPERLAW AND MATTHEW BENDER AT THE 1993 MEETING IN BOSTON.

CM/ECF versus PACER

- CM/ECF Case Management/Electronic Case Filing.
- Pacer was the predecessor to CM/ECF.
- Pacer name persists, though.
- Pacer today is actually a billing system added onto CM/ECF and a budgetary device to disguise CM/ECF costs as a public access costs.
- Pacer exists in name only as a fiction to support the charging of fees for access by non-litigants. A Pacer user is a user of the CM/ECF system who may only download, and not file documents.

5

OTHER TERMS REQUIRING DEFINITION ARE PACER AND CM/ECF.

CM/ECF IS THE THE CASE MANAGEMENT/ELECTONIC CASE FILING SYSTEM OF THE FEDERAL JUDICIARY.

TODAY I WILL JUST REFER TO ECF.

PACER CAME ALONG FIRST AND WAS REPLACED BY ECF.

PACER IS A TERM NOW USED TO DESCRIBE THE PUBLIC ACCESS FRONT END OF ECF.

Courts Need Not Provide The Search Engine

- Courts' primary obligation is to present the opinion document properly.
- Search engines divert court resources away from their primary obligation.
- Court search engines frequently result in firewalled opinion documents.
- Public search engine are the portals to the opinion.
- First should focus on making opinions available - authenticity secondary.

6

AS TO DISTRICT COURT OPINIONS, THE COURTS HAVE DONE BOTH TOO MUCH AND TOO LITTLE.

WE LOOK FOR COURTS TO PRESENT JUDICIAL OPINIONS APPROPRIATELY.

NOT TO EXPEND RESOURCES HOSTING SEARCH ENGINES AND SPECIAL WEB SITES OF OPINIONS.

LET GOOGLE AND PUBLIC ACCESS SITES DO THAT.

AUTHENTICITY - FIRST ASSURE THE INFORMATION IS AVAILABLE, AND THEN WORRY ABOUT AUTHENTICITY;

United States District Courts

- There are 94 United States District Courts (USDC). A bankruptcy court is a separate unit of a district court. Thus also 94 bankruptcy courts.
- These include Article III and Article I courts.
- Many District Courts have multiple divisions, which themselves are larger than other district courts.
- There are approximately 800 USDC Judges.

7

THERE ARE 94 U.S. DISTRICT COURTS IN THE 50 STATES AND A FEW TERRITORIES.

THERE ARE NEARLY 800 US DISTRICT COURT JUDGES.

STOP

WHY ARE THE OPINIONS OF THESE COURTS SO IMPORTANT THAT I WOULD DEVOTE MY PRESENTATION TO THEM?

THESE ARE THE ENTRY LEVEL COURTS TO THE US COURT SYSTEM.

Hidden in Action

- 100,000 U.S. District Court Opinions Each Year [and Bankruptcy Courts are missing as well.]
- Unlike US Courts of Appeals opinions, not accessible comprehensively on the Internet.
- Why are these opinions missing?

8

HIDDEN IN ACTION TODAY ARE 100,000 US DISTRICT COURT OPINIONS EACH YEAR.

THESE ARE AVAILABLE ON LEXIS AND WESTLAW IN COMPREHENSIVE FORM.

THESE ARE AVAILABLE VIA THE COURT'S ECF SYSTEM, ONLY THROUGH CONTORTIONS AND AT SIGNIFICANT EXPENSE.

ADDITIONAL NOTES:

THE PROBLEMS STILL PERSISTS.

BECAUSE JUDGES DO NOT MARK ALL OPINIONS,
ONE MUST DOWNLOADING ALL DOCKET SHEETS FOR ALL
CASES, REPEATEDLY.
AND LOCATE THOSE OPINIONS.

Not Your Edgar

- U.S. District Court Opinions not structured data.
- Patent and SEC filings are highly structured under penalty of rejection - with metadata.
- Court opinions - almost free form and unstructured from tenured independent judges.
- Completely dissimilar from Edgar and Patent Databases.
- Free public access relies upon structured data and databases.

9

JUDICIAL OPINION DOCUMENTS ARE COMPLETELY DISSIMILAR TO STANDARDIZED TAGGED FILINGS SUCH AS SEC FILINGS AND PATENTS.

THE SEC AND PATENT DATABASES CONTAIN HIGHLY STRUCTURED AND TAGGED DATA AND WERE DESIGNED FOR THE PURPOSES OF DISCLOSURE AND SEARCHABILITY.

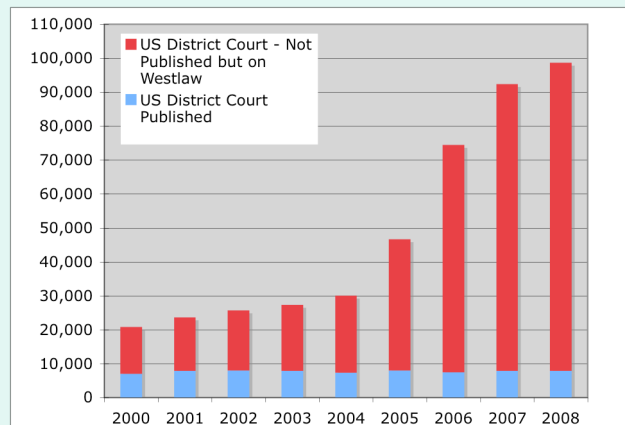
ADDITIONAL NOTES:
SO DISTRICT COURT OPINIONS ARE NOT LIKE EDGAR DATA.
LIKE COMPARING BASEBALLS TO ORANGES.

THAT IS WHY 15 YEARS LATER, THE OPINIONS STILL ARE NOT AVAILABLE.

FOR A PUBLIC ACCESS SITE, COMPILING 100,000 OPINIONS A YEAR

CAN ONLY BE DONE IF THE OPINION DOCUMENTS ARE PRESENTED BY THE COURT IN A REGULAR FORMAT.

Lexis and WestLaw Collect 100,000 Citable U.S. District Court Opinions Per Year



10

THESE 800 DISTRICT JUDGES PRODUCE OVER 100,000 OPINIONS A YEAR.

OF THE 100,000, ONLY 8000 OR SO END UP IN THE FEDERAL SUPPLEMENT.

THE ADMINISTRATIVE OFFICE OF US COURTS DOES NOT COMPILE THESE STATISTICS,
AT LEAST NOT FOR RELEASE TO THE PUBLIC.

ADDITIONAL NOTES

CHART PREPARED BY ALAN SUGARMAN

THE ADMINISTRATIVE OFFICE IS THE ADMINISTRATIVE OFFICE OF US COURT, OFTEN REFERRED TO AS THE "AO."

THAT WOULD BE 2 OR 3 OPINIONS A WEEK PER JUDGE.

IT IS FAR MORE THAN MANY THINK - ESPECIALLY TO THOSE WHO MISTAKENLY

BELIEVE THEY ARE ALL PUBLISHED IN WEST'S FEDERAL SUPPLEMENT

U.S. Courts of Appeals Opinion Statistics

Table 2.5
U.S. Courts of Appeals (Excludes Federal Circuit). Type of Opinion or Order Filed in Cases Terminated on the Merits After Oral Hearing or Submission on Briefs

Fiscal Year	Total	Oral	Written, Signed*		Written, Reasoned, Unsigned*		Written, Unsigned, Without Comment		Total Unpublished	Percent Unpublished
			Published	Unpublished	Published	Unpublished	Published	Unpublished		
1990**	21,022	94	6,008	2,374	712	9,669	4	2,161	14,204	68.0%
1995	27,772	99	6,118	3,814	566	14,233	5	2,937	20,984	75.9%
2000	27,516	63	5,099	4,281	427	16,510	32	1,104	21,895	79.8%
2003	27,009	13	5,037	4,223	364	16,402	38	932	21,557	79.9%
2004	27,438	20	4,782	4,468	366	16,973	54	775	22,216	81.0%
2005	29,913	3	5,043	5,211	396	18,254	60	946	24,411	81.6%
2006	34,580	1	5,082	7,277	353	20,763	71	1,033	28,073	84.1%
2007	31,717	2	4,844	5,997	305	19,607	72	890	26,494	83.5%

Note: This table does not include data for the U.S. Courts of Appeals for the Federal Circuit.

*Includes only those opinions and orders that expound on the law as applied to the facts of each case and that detail the judicial reasons upon which the judgment is based.

**12-month period ending June 30.

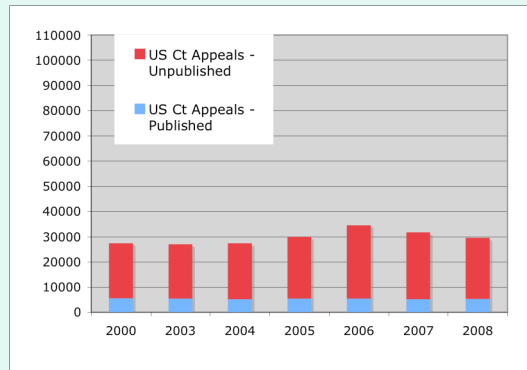
Source: Table S-3, *Annual Report of the Director: Judicial Business of the United States Courts*.

11

THE ADMINISTRATIVE OFFICE, HOWEVER, DOES COMPILE STATISTICS FOR APPELLATE COURT OPINIONS.

THIS DATA SHOWS THE NUMBER OF U.S. APPELLATE OPINIONS EACH YEAR - PUBLISHED VERSUS UNPUBLISHED.

Only 20% of the 30,000 yearly U.S. Courts of Appeals Opinions are In the Federal Reporter.



12

THERE ARE 30,000 APPELLATE OPINIONS PER YEAR VERSUS THE 100,000 DISTRICT COURT OPINIONS.

APPROXIMATELY 5000 ARE “PUBLISHED” IN THE FEDERAL REPORTER.

THE FEDERAL REPORTER THEN REPRESENTS ONLY 20% OF THE CITABLE OPINIONS OF THE COURTS OF APPEALS.

ADDITIONAL NOTES:

THE CHART WAS PREPARED BY HYPERLAW BASED UPON THE AO TABLE.

What About District Court Opinions

- Originally, in 1994- 2002, Pacer did not contain the case documents and thus did not include court opinions.
- Chaotic and random access.
- Some district courts posted selected opinions on “Pacer” web sites.

13

BY 1998, ONLY A VERY FEW OF THE DISTRICT COURT OPINIONS A YEAR WERE MAKING THEIR WAY ONTO THE INTERNET,

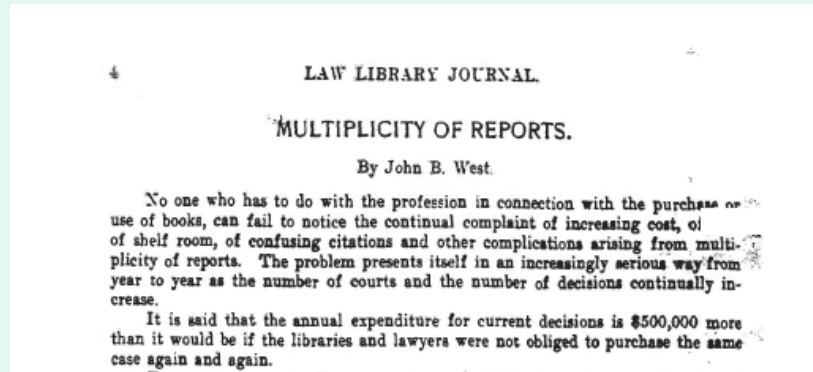
THE PACER SYSTEM CONTAINED DOCKET INFORMATION, BUT NOT OPINION DOCUMENTS.

A FEW OF THE 94 COURTS HAD LOCALLY DESIGNED COURT WEB SITES CONTAINING OPINIONS AND CALLED THE SITES “PACER” SITES.

ADDITIONAL NOTES:

AND WHAT WAS AVAILABLE CAME IN NUMEROUS FORMATS AND LITTLE SYSTEMATIC AVAILABILITY.

“Sooner or later these
conditions must change...”
John B. West 1909.



A LITTLE HISTORY IS USEFUL.

I RECOMMEND TO YOU AS ESSENTIAL READING: JOHN B.
WEST'S 1909 ARTICLE IN
THE LAW LIBRARY JOURNAL "MULTIPLICITY OF REPORTS."

HE WROTE THIS 100 YEARS AGO, PERHAPS AS AN ADDRESS TO
THE LAW LIBRARIANS'
1909 MEETING IN BRETON WOODS NEW HAMPSHIRE

HE COMPLAINED OF DIFFERENT VERSIONS OF OPINIONS, AND
OF CITATIONS THAT APPEARED
ONLY WHEN THE OPINIONS APPEARED IN BOUND PRINT
VOLUMES.

HIS PREFERENCE WAS TO HAVE THE COURT PROVIDE THE
AUTHENTIC VERSION
AND TO PROVIDE THE CITATION AS AND WHEN THE OPINIONS
WERE RELEASED BY THE COURT.

ALAS, CONDITIONS HAVE NOT CHANGED ALL THAT MUCH.

ADDITIONAL NOTES

THE TYPEWRITER



15

DURING MOST OF THE 20TH CENTURY,
JUDICIAL OPINIONS WERE CREATED ON THIS DEVICES LIKE
THIS.

SELECTRIC TYPEWRITER



16

WHICH LATER WAS REPLACED WITH THIS MARVEL OF OPINION
PRODUCTION TECHNOLOGY,
THE IBM SELECTRIC.

FLITE LEGAL DATABASE



17

BY THE 1960'S, MAIN FRAME COMPUTERS WERE ON THEIR WAY FOR LEGAL RESEARCH.

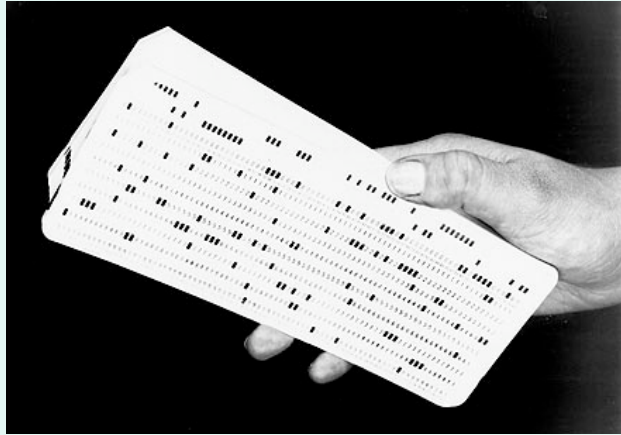
ONE OF THE EARLIEST LEGAL DATABASES WAS FLITE, A US AIR FORCE PROJECT UNTIL SHUT DOWN IN 1994.

THE JURIS SYSTEM WOULD HAVE BEEN CAPABLE OF COLLECTING OPINIONS FROM THE FEDERAL COURTS SINCE OPINIONS WERE BECOMING AVAILABLE DIGITALLY.

THE HANDOUTS HAVE MORE INFORMATION ABOUT JURIS.

ADDITIONAL INFORMATION:
INITIALY CONTAINING US SUPREME COURT CASES.

Modern Data Storage 80 Characters per card



18

FLITE CONVERTED THE OPINIONS TO THIS DATA STORAGE
MEDIUM - THE PUNCHED CARD.

ADDITIONAL NOTES:

EACH CARD WAS ONE LINE OF TEXT.

ALL CAPITAL LETTERS

FOR FLITE DATA, THE OPINIONS WERE BEING TYPED AND
LATER REKEYED FOR INPUT TO COMPUTERS.

LEXITRON



19

SOON, EARLY WORD-PROCESSORS APPEARED LIKE THE THE LEXITRON

BUT NOT USED MUCH BY JUDGES AND CONVERSION OF DATA TO MAINFRAME DATA WAS DIFFICULT.

ADDITIONAL NOTES

THUS, EVEN INTO THE 80s and mid-90s, DOCUMENT DATA WAS CONVERTED BY KEYBOARDING INTO COMPUTER DATA STORAGE MEDIA

Juris

- Department of Justice and Air Force.
- Opinions keyed in from West National Reporter Books under license.
- Some opinions direct from courts.
- Lexis had jump on West.
- West provided keyed in data by Juris.
- Then the model switches - Wests keys in its own case books and license data to Juris.
- But, courts were starting to produce most opinions digitally.

20

FLITE EVOLVED INTO JURIS - RUN BY THE DEPARTMENT OF JUSTICE.

JURIS WAS KEYBOARDING OPINIONS TAKEN FROM WEST'S NATIONAL REPORTERS, UNDER LICENSE FROM WEST.

WHEN WESTLAW STARTED, ITS INITIAL DATABASE WAS COMPOSED OF DATA KEYBOARDED BY THE GOVERNMENT.

SOON WEST TOOK OVER THE DATA CONVERSION.

WEST THEN LICENSED THE KEYBOARDED DATA BACK TO JURIS.

FOIA for Juris - Its Demise

- Public interest groups filed FOIA for Juris.
- West terminates contract and forces DOJ to destroy all data from West books.
- Public interest groups lose litigation.
- Current “Juris” data on Internet is basically junk, or is available in better format elsewhere.

21

IN 1994, PUBLIC INTEREST GROUPS FILED A FOIA ACTION AGAINST DOJ TO OBTAIN THE JURIS DATA.

SO WESTLAW TERMINATED ITS ARRANGEMENTS WITH DOJ AS TO JURIS.

WEST DID NOT WANT ITS DATABASE BEING RELEASED THROUGH FOIA.

NOR IT SEEMS WAS WEST INTERESTED IN SUPPORTING THE GOVERNMENT CREATING ITS OWN DATABASE DIRECTLY FROM THE OPINIONS FROM THE COURTS.

THE GOVERNMENT THEN HAD TO USE WESTLAW OR LEXIS.

THE GOVERNMENT AND WEST WON THE FOIA CASE AND WEST DATA WAS PURGED.

ADDITIONAL NOTES:

ANY JURIS "DATA" CIRCULATING TODAY DOES NOT INCLUDE WEST NATIONAL REPORTER DATA.

E-Government Act

22

Public Law 107-347
107th Congress

An Act

To enhance the management and promotion of electronic Government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget, and by establishing a broad framework of measures that require using Internet-based information technology to enhance citizen access to Government information and services, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “E-Government Act of 2002”.

23

THEN, ALONG CAME THE E-GOVERNMENT ACT OF 2002.

WITH THE BACKROOM SAVVY OF THE AALL ...

Access to Written Opinions Under E-Govt. Act

(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.

24

A PROVISION WAS INCLUDED TO REQUIRE THE COURTS TO MAKE ALL WRITTEN OPINIONS AVAILABLE IN SEARCHABLE ELECTRONIC FORMAT.

E-Government Act of 2002 Requires Access to Opinions

- Opinions on Court Websites
- Access
- Substance of all written opinions
- Even if not “published”
- Text Searchable Format

25

AN INITIAL RESPONSE BY SOME OF THE COURTS WAS TO
PLACE SELECTED OPINIONS
ON SEPARATE WEB SITES.

SOME WERE ALREADY DOING SO, BUT GENERALLY ONLY WITH
PUBLISHED OPINIONS -

MANY COURTS WERE WAITING FOR THE IMPLEMENTATION
OF ECF, THE SUCCESSOR TO PACER,

CM/ECF - A Wild Success

- CM/ECF is the administrative “heart” of the activities of the courts and litigants and is the official filing system.
- Yet CM/ECF has been wildly successful - it has revolutionized the operation of the federal courts
- Even more amazing is that it was implemented while the courts continued to function
- It is a sign of ignorance to describe the system, as some have done, as a “billion dollar boondoggle”

26

THE ECF SYSTEM WAS TO BE THE ELECTRONIC FILE ROOM FOR THE DISTRICT COURTS.

ALMOST ALL DOCUMENTS, INCLUDING OPINIONS, WOULD BE STORED IN ACROBAT PDF FORMAT,
AND LINKED TO THE ON-LINE DOCKET SHEET.

BY THE WAY, ECF IS NOT A BOONDOGGLE - FEDERAL LITIGATORS AND JUDGES AND CLERKS SWEAR BY IT, EVEN WHILE
SWEARING AT IT.

ADDITIONAL NOTES:

THE PAGE NUMBERS OF THE ACROBAT PDF FILES COULD BE CITED.

BUT ACCESS WAS NOT FREE - .08 A PAGE.

SOME HAVE CALLED THIS A BILLION DOLLAR BOONDAGLE -
TO THOSE WHO LITIGATE IN THE COURTS, IT IS A WILDLY
POPULAR AND SUCCESSFUL SYSTEM

Judiciary Response to E-Govt. Act In the spirit of compliance ...



Administrative Office of the U.S. Courts
PACER Service Center

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. 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.

This functionality will only be available in courts that have installed District Court CM/ECF version 2.4 or higher, and will only provide free access to opinions filed after the court is actively using version 2.4. There may still be a charge to access opinions that pre-date the court's use of version 2.4. The new report is available under the Reports menu. PACER customers can also access opinions via existing reports and queries, such as the docket report, and will not be billed for accessing the written opinion document itself, but will be billed for the report or query used to identify the document. For example, if a PACER customer runs a docket report, the customer will be charged for the docket report. If the customer then clicks on the document number hyperlink for a written opinion document, the customer will not be charged for viewing the document. Future versions of Bankruptcy CM/ECF will have similar functionality.

If you have any questions, please contact the PACER Service Center at pacer@psc.uscourts.gov.

27

WHEN ECF BECAME MOSTLY IMPLEMENTED IN THE DISTRICT COURTS,

IN 2006, THE FEDERAL JUDICIARY ANNOUNCED THAT IN THE SPIRIT OF THE E-GOVERNMENT ACT,

THE WRITTEN OPINIONS ON ECF WOULD THEREAFTER BE FREE.

Free Written Opinions

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. Written

28

THE WAY THE AO SET UP THIS FEATURE, WAS THAT JUDGES WOULD BE ABLE TO "MARK" A DOCUMENT IN THE ECF SYSTEM AS A "WRITTEN OPINION."

Free Written Opinions

- Free Access on CM/ECF to Pacer Customers
- Available Under Reports Menu
- Written Opinions Reports Item
- Also, free access if accessed from a docket report

29

THOSE MARKED OPINIONS WOULD BE FREE TO DOWNLOAD.

ONLY IF THE OPINIONS WERE MARKED BY THE JUDGES.

THE SOLUTION RELIED UPON BUSY JUDGES
WITH LIFE TENURE AND FREE WESTLAW AND LEXIS,
SOME OF WHOM DID NOT WANT UNPUBLISHED OPINIONS
CIRCULATED.

THIS WAS THE WEAK LINK.

EVEN WORSE, THE ADMINISTRATIVE OFFICE CREATED NO
QUALITY CONTROL PROCEDURES TO MONITOR THE SOLUTION.

Written Opinions Reports Screen

The screenshot displays the 'Written Opinions Report' interface within the CM/ECF system. The browser address bar shows the URL 'https://ecf.mad.uscourts.gov/cgi-bin/'. The page features a blue header with the 'ECF' logo and navigation links for 'Query', 'Reports', 'Utilities', and 'Logout'. The main form area includes several input fields and dropdown menus: 'Case Number', 'Last Name', 'First Name', 'Middle Name', 'Office' (with options: Boston, Springfield, Worcester), 'Case Type' (with options: Civil, Criminal, Magistrate Judge), 'Nature of Suit' (with options: 0 (zero), 110 (Insurance), 120 (Contract: Marine)), 'Cause' (with options: 0 (No cause code entered), 02:0431 (02:431 Fed. Election...), 02:0437 (02:437 Federal Elect...)), and 'Case Flags' (with options: ADR, ADVISE, APPEAL). Below these fields, there is a 'Filed between' date range selector set to '5/26/2009' and '6/25/2009', and radio buttons for 'Summary text' and 'Full docket text'. A 'Sort by' dropdown is set to 'Case Number'. At the bottom, there are 'Run Report' and 'Clear' buttons.

30

THIS SLIDE SHOWS THE ECF WRITTEN OPINIONS REPORT WHICH PROVIDES LIMITED METADATA SEARCHES OF DOCUMENTS MARKED AS WRITTEN OPINIONS.

FRAP 32.1

31

New Rule 32.1 Federal Rules of Appellate Procedures

- A US Court of Appeals may not prohibit citation of any federal judicial opinions.
- Applies to all “federal” opinions.
- Comments of judicial conference committee indicate would include district court opinions.

32

THE NEXT DEVELOPMENT OF IMPORT WAS
THE NEW FEDERAL APPELLATE RULE 32.1 WHICH WENT INTO
EFFECT IN 2007

IT ALLOWED THE CITATION TO ALL FEDERAL OPINIONS,
WHETHER OR NOT PUBLISHED.

THIS CHANGED THE GROUND RULES AS TO THE NUMBER OF
OPINIONS
WHICH A PRACTITIONER MUST BE ABLE TO ACCESS.

FRAP Rule 32.1 Opinions Citable

- Unpublished
- Not for publication
- Non-precedential
- Not Precedent
- All federal judicial opinions

33

SINCE 100,000 DISTRICT COURT CASES A YEAR WERE NOW TO BE CITABLE,

HOW WERE THESE TO BE MADE AVAILABLE TO SOMEONE WITHOUT WESTLAW OR LEXIS???

Advisory Committee Report on Rule 32.1

The disparity between litigants who are wealthy and those who are not is an unfortunate reality. Undoubtedly, some litigants have better access to unpublished opinions, just as some litigants have better access to published opinions, statutes, law review articles - or, for that matter, lawyers. The solution to these disparities is not to forbid all parties from citing unpublished opinions. After all, parties are not forbidden from citing published opinions, statutes, or law review articles - or from retaining lawyers. Rather, the solution is found in measures such as the E-Government Act, which makes unpublished opinions widely available at little or no cost.

Advisory Committee on Appellate Rules, May 6, 2005, p. 5. Judge Alito.

34

JUSTICE ALITO, THEN A FEDERAL JUDGE, IN THE ADVISORY REPORT IN SUPPORT OF THE RULE SAID -

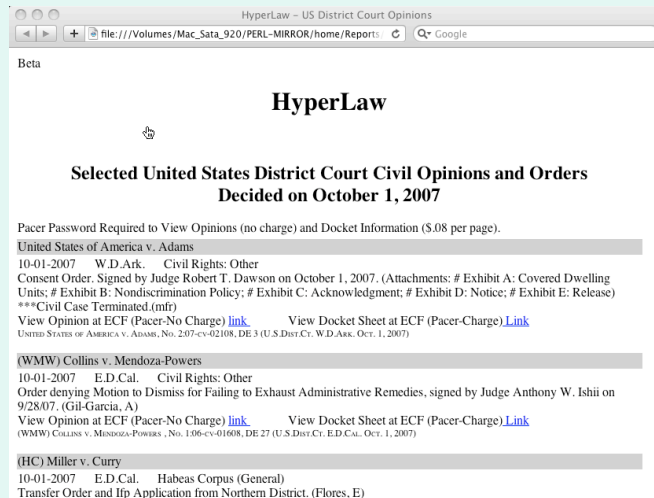
DO NOT WORRY ABOUT THOSE WITHOUT ACCESS TO WESTLAW AND LEXIS -

BECAUSE, THE E-GOVERNMENT ACT WILL MAKE OPINIONS AVAILABLE WIDELY.

ADDITIONAL NOTES

THIS REPORT IS AVAILABLE AT HYPERLAW.COM

Hyperlaw 2007 District Court Beta



35

IN 2007 I DECIDED AS A DEMONSTRATION PROJECT TO USE ECF TO

COLLECT AND COMPILE ALL THE NOW CITABLE U.S. DISTRICT COURT OPINIONS.

AFTER FINISHING THE BETA VERSION, I DISCOVERED THAT THE OPINION IDENTIFICATION WAS INCOMPLETE.

SURPRISE: THE JUDGES WERE NOT MARKING ALL OF THEIR OPINIONS.

AND MANY OPINIONS WERE NOT OCR'D.

SO I STOPPED THE PROJECT.

NOTES:

IT JUST MADE NO SENSE TO RELEASE VAPORLAW, A SECOND RATE INCOMPLETE DATABASE OF OPINIONS, ALL AS A PRO-BONO PROJECT.

ALL OTHER PUBLIC ACCESS SITES HAVE SUBSEQUENTLY RUN

<http://www.hyperlaw.com/topics/2008/2008-05-07-HL-to-AO-lower-court-opinion-access-1.pdf>



May 7, 2008

James C. Duff, Director
Administrative Office of the U.S. Courts
One Columbus Circle NE
Washington, D.C. 20544

RE: Public Access to Opinions of the U.S. District and Bankruptcy Courts
E-Government Act of 2002 and Reauthorization

Dear Director Duff:

I am writing to you in your capacities as Director of the Administrative Office of the U.S. Courts and as Secretary to the Judicial Conference of the U.S. concerning the E-Government Act of 2002 (the "2002 Act") as it pertains to the meaningful access to the judicial opinions of the nearly 200 U.S. district and bankruptcy courts.¹ In this letter, I provide an overview of the Act, the implications of the proposed reauthorization of the 2002 Act, and the accessibility of these opinions. I urge that the federal judiciary take the final small steps needed to permit the public to have unrestricted access through search engines and public access law web site to all lower court federal judicial opinions. I ask that you

36

INSTEAD,

I PREPARED AN 18 PAGE WHITE PAPER DISCUSSING HISTORY,
POLICY, TECHNICAL ISSUES, AND
RECOMMENDATIONS, AND CONCLUDING THAT THE FEDERAL
JUDICIARY
WAS NOT COMPLYING WITH THE SPIRIT OF THE ACT.

IN MAY, 2008 I SENT THE WHITE PAPER DIRECTLY TO THE
JUDICIARY.

ADDITIONAL NOTES:

THE RESPONSE BASICALLY IS THAT WE WILL STUDY THE ISSUE.

THE LETTER IS AVAILBLE AT MY WEB SITE HYPERLAW.COM.

I REFERRED TO THE MISMARKED OPINIONS AND
RECOMMENDED A FILE NAME AS I WILL DISCUSS IN A MINUTE.

SADLY, THRE HAS BEEN NO ACTIOIN FROM THE FEDERAL

Source: Selling the Law: The Business of Public Access to Court Records
 Stephen Schultze and Shubham Mukherjee, Berkman Center of Harvard University.
 Presented to the Center for Information Technology Policy at Princeton University,
 Feb. 5, 2009. Published opinions only. Comparison of opinions on Westlaw versus
 opinions identified on CM/ECF Written Opinions Report. 24 least compliant courts.
 Unpublished opinions not yet analyzed and expected to have even lower compliance.

ECF Opinion Report Audit*

alnd	0.00%	akd	50.00%
iasd	0.00%	wyd	50.00%
nmd	0.00%	flsd	50.55%
nmid	0.00%	flmd	53.50%
mdd	7.41%	nysd	60.58%
mad	8.70%	scd	63.46%
prd	16.95%	ctd	65.56%
txwd	19.23%	nced	66.07%
vid	34.48%	mowd	67.65%
gand	43.08%	vaed	70.49%
mtl	45.45%	wvsl	71.88%
tnwd	45.83%	nynd	74.04%

* preliminary numbers, subject to minor corrections

FOLLOWING UP ON MY LETTER,
 STEPHEN SCHULTZE OF THE BERKMAN CENTER AT HARVARD
 IS PREPARING A STUDY WITH STATISTICS OF THE ECF
 COMPLIANCE.

HIS REPORT CARD SHOWS A LOT OF C'S AND F'S.

ADDITIONAL NOTES:

SCHULTZE IS UNDERTAKING AN ANALYSIS COMPARING THE
 ECF MARKED OPINIONS WITH PUBLISHED OPINIONS.

THE NUMBER OF MISSING PUBLISHED OPINIONS IS
 DISTURBING.

A COMPLETE ANALYSIS OF PUBLISHED AND UNPUBLISHED
 OPINIONS IS IN PREPARATION.

BUT, ANYONE SPOT CHECKING MOST CM/ECF CITES WITHIN
 MINUTES WILL DISCOVER IRREGULARITIES.

Southern District of New York 1117 Missing Opinions Most Opinions Not Ocr'd

- US District Court Southern District of New York (SDNY) Opinions for 2008.
- The Court's CM/ECF Written Opinions Report Lists 2282 written opinions.
- Lexis lists 3339 SDNY Opinions.
- So, at least 1,117 opinions are missing - an important US District Court.

38

AS A SAMPLE, WE LOOKED AT THE SOUTHERN DISTRICT OF NEW YORK,
WHICH SHOWED D'S AND F'S.

ADDITIONAL NOTES:

THIS IS ONE OF BUSIEST DISTRICT COURTS IN THE U.S.
THE BANKRUPTCY COURT HANDLES MANY OF THE MAJOR BANKRUPTCIES

2282 OPINIONS MARKED, BUT THERE ARE 3339 ON LEXIS.

OVER A THOUSAND ARE MISSING, PERHAPS MORE.

ALMOST OF THE OPINIONS ARE NOT TEXT SEARCHABLE.

SOME OF THE 2282 DOCUMENT ARE NOT OPINIONS, BUT ORDERS.

THUS, MORE THAN 1117 OPINIONS ARE MISSING.

Is The Federal Judiciary in Compliance With E-Government Act?

39

Has the federal Judiciary Exceeded the Requirements of the E-Govt Act?



IN MAY 2009, THE FEDERAL JUDICIARY CERTIFIED TO CONGRESS THAT

NOT ONLY WAS IT SATISFYING THE REQUIREMENTS OF THE ACT,

BUT THE JUDICIARY WAS EXCEEDING THOSE REQUIREMENTS.

NOTES:

THE LETTER SENT BY THE AO TO THE SENATE AVAILABLE AT HYPERLAW.COM

July 10, 2009: Judiciary Queried As to Claims re E-Govt Act



July 10, 2009

James C. Duff, Director
Administrative Office of the U.S. Courts
One Columbus Circle NE
Washington, D.C. 20544

RE: Public Access to Opinions of the U.S. District and Bankruptcy Courts
E-Government Act of 2002 and Reauthorization

Dear Director Duff:

I am disappointed to learn that the federal Judiciary has recently certified to Congress that:
(1) all "federal court are in compliance" with the E-Government Act of 2002, and (2) that
the courts were indeed exceeding the requirements of the Act. In my correspondence to you

41

ON JULY 10, 2009, WE SENT A LETTER TO THE JUDICIARY
ASKING

HOW IT COULD MAKE SUCH A STATEMENT

WHEN IT WAS WELL AWARE OF

NON-COMPLIANCE WITH BOTH THE LETTER AND SPIRIT OF THE
ACT.

A COPY WAS SENT TO JUSTICE ALITO.

NOTES:

THE LETTER IS AVAILABLE ON THE HYPERLAW WEB SITE.

vaporlaw

42

Vaporlaw

- Case Law that is believed to be accessible on the web, but is not.
- Case Law sites puffing the availability of case law on their sites.
- Case law sites not identifying the universe of opinions from which collections are drawn.
- Vaporlaw provides a cover to judicial and governmental officials.
- Gives impression that there is no problem.
- News and legal “journalists” are willing repeat false claims with no analysis.

43

VAPORLAW

VAPORLAW IS PART OF THE PROBLEM.

THERE ARE JUDGES, LAWYERS, OFFICIALS, AND POLICY MAKERS

WHO TRULY BELIEVE THAT DISTRICT COURT OPINIONS ARE AVAILABLE FOR FREE TO THE PUBLIC ON THE INTERNET.

VAPORLAW CREATES THIS FALSE IMPRESSION.

ADDITIONAL NOTES:

I HAVE LITTLE DOUBT THAT JUSTICE ALITO SINCERELY BELIEVES THAT THE E-GOVERNMENT ACT IS WORKING IN A MEANINGFUL WAY.

MOST PUBLIC ACCESS SITES SUFFER FROM THE FACT THAT THE OPINIONS ARE “DUMPED” AND RELY UPON SEARCHING ETC.

THESE SITES DO NOT HAVE A COMPANION SQL TYPE DATABASE WITH AN ENTRY FOR EACH OPINION DOCUMENT.

Vaporlaw Examples

- That the Pacer system makes all U.S. District Court Opinions Available for free.
 - That LexisOne provides free Federal opinions for the last ten years.
 - That Public Resources with Federal Reporter opinions has “All” Court of Appeals opinions when it is missing 80%.
 - That Justia is hosting significant numbers of district court opinions.
 - That Precedent’s collection is comprehensive.
- Alas, some law school cites promote vaporlaw sites.

44

HERE ARE SOME EXAMPLES OF VAPORLAW.

THE SLIDES IN THE HANDOUT PROVIDE MORE DETAIL

Innocent Promotion of VaporLaw - Georgetown Law



45

IN THE SPIRIT OF FAIR AND BALANCED REPORTING
MY FIRST EXAMPLE IS THE
GEORGETOWN LAW SCHOOL WEB SITE WHICH
DESCRIBES FREE AND LOW COST LEGAL RESEARCH

THE SITE PRESENT LINKS TO TWO SITES WHICH THEY CLAIM
TO HAVE THE DISTRICT COURT OPINIONS.

Innocent Promotion of Vapor Law - Georgetown Law?

From Georgetown Law Center

Federal District Court Cases		
Source	Dates	Notes
Justia	2004-present	Searchable by citation, party name, and keyword. Can limit search by date, court, and lawsuit type.
PreCYdent*	2004-present	Searchable by citation, party name, and keyword. Can limit search by date, court, and authoring justice.

* Contains cases from most, but not all district courts.

46

ONE, JUSTIA, WHICH IN FACT HAS A FEW OPINIONS BUT NOT ANY SIGNIFICANT NUMBER.

TWO, PRECYDENT WHICH HAS A SMATTERING OF OPINIONS WITH LARGE DISCLAIMERS

THAT ITS DATABASE IS NOT COMPLETE AT ALL. PRECYDENT WAS FACED WITH THE SAME ECF LIMITATION THAT WE WERE FACED WITH IN 2007.

NOTES:

JUSTIA LINKS TO THE INFORMATION FROM THE CM/ECF CASE DATABASE.

SO, ONE CAN FIND THE CASE AND THE DOCKET QUICKLY.

THEN DOWNLOAD THE DOCKET BY PAYING.

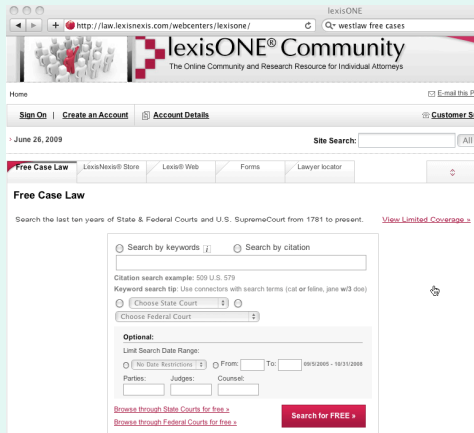
AND THEN FIND THE WRITTEN OPINIONS.

IF MARKED, IT IS FREE. IF NOT MARKED, ONE HAS TO PAY.

THERE IS NOT SEARCHING.

PRECYDENT RAN INTO THE SAME WALL THAT HYPERLAW DID - CASES NOT MARKED AND NOT OCR'D.

LexisOne Vaporlaw

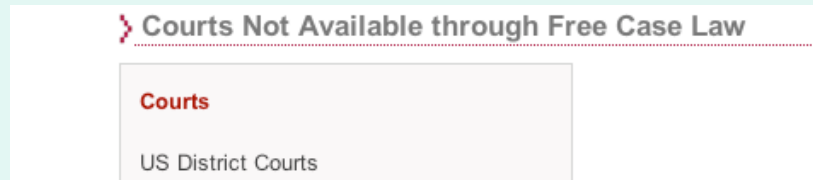


47

ANOTHER VAPORLAW SITE IS LEXISONE -

THEY ANNOUNCE THEY HAVE FEDERAL OPINIONS AVAILABLE
FOR THE LAST TEN YEARS - FOR FREE

LexisOne Vaporlaw Exclusions - 100,00 U.S. District Court Opinions a Year



48

BUT THEN, IN THE SMALL PRINT, EXCLUDE THE 94 U.S.
DISTRICT COURTS - 100,000 OPINIONS A YEAR.

THAT IS VAPORLAW.

Vaporlaw Example: “all” is not “all”

Today's release covers all U.S. Supreme Court decisions and all Courts of Appeals decisions from 1950 on. The release is equivalent to 1,858 volumes of case law in book form, a stack of books 348 feet tall.



AMERICA'S OPERATING SYSTEM - February 8, 2008 - Creative Commons and Public.Resource.Org are pleased to announce the release of 50 years of courts of appeals decisions. The cases are stamped CC-Zero, indicating they are Works of the Government and in the Public Domain and may be reused without restriction.



[READ THE ANNOUNCEMENT](#) (pdf) **OR** [BROWSE THE CASES](#) ([file](#) | [rsync](#))

The facts: Public Resource's U.S. Courts of Appeals Opinions are only those in Federal Reporter through June, 2007. No Federal Appendix and no unreported opinions. In 2007 (last full year of Public Resource opinions), there were 31,717 opinions of which 26,494 were unpublished.

49

CONTINUING MY EFFORT TO BE FAIR AND BALANCED ..

ANOTHER VAPORLAW SITE - PUBLIC RESOURCES LAUDABLE SITE WITH CREATIVE COMMONS.

THEY OBTAINED A KEYBOARDED VERSION OF THE FEDERAL REPORTER, BUT ONLY TO MID-2007.

IT HAS NOT BEEN UPDATED.

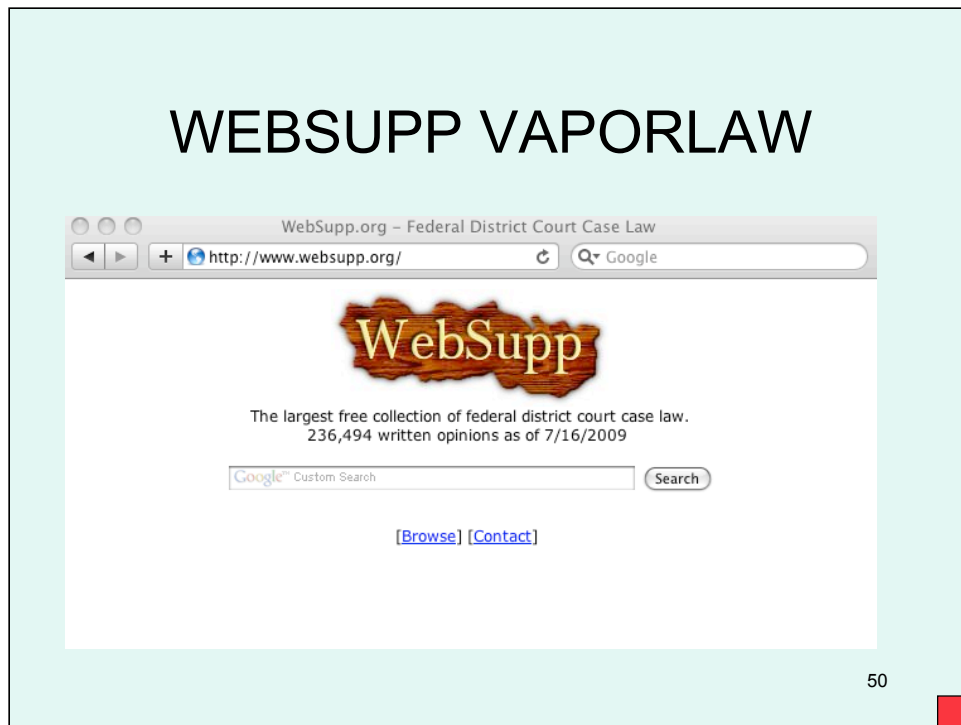
IT CLAIMS TO BE ALL US COURTS OF APPEALS OPINIONS FOR THE COVERED PERIOD.

BUT CONTAINS ONLY PUBLISHED AND IS MISSING THE UNPUBLISHED - 80%.

DOES NOT INCLUDE THE FEDERAL APPENDIX.

HAS NO INTERNAL PAGINATION FOR SOME UNEXPLAINED REASON.

WEBSUPP VAPORLAW



ANOTHER EXAMPLE OF VAPORLAW IS A PRO-BONO SITE -
WEBSUPP.ORG

ONE WOULD THINK READING THIS HOME PAGE THIS WAS A
COMPREHENSIVE SITE UP TO DATE TO JULY 16, 2009

BUT, IT IS VAPORLAW AS WELL.

IT WAS NOT UP TO DATE BY ANY MEANS, MISSING MONTHS AND
YEARS OF OPINIONS.

MANY OF THE 236,494 DOCUMENTS ARE NOT EVEN OPINIONS.

ADDITIONAL NOTES;

WEBSUPP.ORG BASED ON E-MAIL CORRESPONDENCE, WAS
NOT AWARE IF THE FACT THAT ALL OPINIONS WERE NOT BEING
MARKED

OR THAT MANY OF ITS DOCUMENTS WERE SIMPLE ORDERS
AND NOT OPINIONS OR CASE LAW.

GOOD INTENTIONS DO NOT MAKE THE GLASS FULL



Metadata

Opinion Metadata

- Structured information to describe a document.
- Metadata for a book: title, author, date of publication, subject, ISBN etc.
- Metadata for a court opinion: parties, counsel, judge, name, court, date, docket number etc.

52

MY NEXT TOPIC IS THE RELATIONSHIP BETWEEN ACCESSIBILITY AND METADATA.

METADATA ASSOCIATED WITH EACH OPINION DOCUMENT IS REQUIRED FOR ANY SEARCH SYSTEM TO FUNCTION EFFECTIVELY.

NOTES;

FOR A JUDICIAL OPINION, METADATA WOULD INCLUDE THE NAMES OF THE PARTIES, THE COURT, THE DATE FILED, THE JUDGE, THE DOCKET NUMBER ETC.

METADATA IS REQUIRED TO BRING JUST A LITTLE SENSE OUT OF SEARCHING FOR INFORMATION

WESTLAW AND LEXIS ARE EASY TO USE BECAUSE OF THE ADDED METADATA.

Citation Metadata

- Uniquely defines an opinion.
 - Name of case
 - Court
 - Case (Docket) Number
 - Date of Opinion
 - Citation to Reporter
- Finding a known opinion most frequent task for law research.
- Citation metadata permits searchers to locate a specific opinion.
- Citation metadata permits linking to opinion.
- Citation resolvers use citation metadata.

53

CERTAIN METADATA UNIQUELY DEFINES THE OPINION DOCUMENT -

REQUIRED FOR LINKING FROM OTHER DOCUMENTS TO THE OPINION.

A CITATION RESOLVER USES CITATION METADATA TO TRANSLATE FROM ONE CITATION FORM TO ANOTHER CITATION FORM.

New ECF Citation Metadata Docket Entry “DE” No.

- Docket Entry ID on the Docket Sheet - the “DE” Number.
- Natural choice for any court that maintains a docket system assigning numbers to documents filed on the docket.
- No human intervention required.
- Automatically addresses issues of modified opinions when filed on the docket.

54

THE DOCKET ENTRY NUMBER FOR AN OPINION IS PROPERLY CLASSIFIED AS PRIMARY CITATION METADATA FOR ANY COURT WHICH HAS PUBLIC DOCKET SHEETS - SUCH AS ECF.

The Docket Entry No ECF Citation Metadata DE 180

04/22/2008	178	Minute Entry: Motion Hearing held on 4/21/2008 before Hon. Marilyn Hall Patel (Date Filed: 4/22/2008) re 161 MOTION to Amend/Correct, 137 MOTION to Modify ; CASE REFERRED to Magistrate Judge for Settlement Conference, to be completed within 60-90 days; Motion Hearing set for 6/30/2008 02:00 PM in Courtroom 15, 18th Floor, San Francisco. Pretrial Conference set for 1/21/2009 02:30 PM; Jury Trial set for 2/3/2009 08:30 AM; (Court Reporter Juanita Gonzales.) (awb, COURT-STAFF) (Date Filed: 4/22/2008) (Additional attachment(s) added on 4/22/2008: # 1 Supplement) (awb, COURT-STAFF). (Entered: 04/22/2008)
04/22/2008		CASE REFERRED to Magistrate Judge Magistrate Judge Elizabeth D. Laporte for Settlement (wh, COURT STAFF) (Filed on 4/22/2008) (Entered: 04/22/2008)
04/24/2008	179	NOTICE OF SETTLEMENT CONFERENCE AND ORDER - Settlement Conference set for 5/29/2008 09:30 AM. Signed by Judge Elizabeth D. Laporte on 4/24/08. (lmh, COURT STAFF) (Filed on 4/24/2008) (Entered: 04/24/2008)
05/01/2008	180	MEMORANDUM AND ORDER by Judge Marilyn Hall Patel DENYING defendants' motion to amend the protective order AND DENYING defendants' motion to amend counterclaims(awb, COURT-STAFF) (Filed on 5/1/2008) (Entered: 05/01/2008)
05/12/2008	181	MOTION for Partial Summary Judgment filed by Wayne Drizin, Michael Gardiner, Electronic Plastics Corporation and A Card Company. Motion Hearing set for 6/30/2008 02:00 PM in Courtroom 15, 18th Floor, San Francisco. (Attachments: # 1 Proposed Order)(Conde, Timothy) (Filed on 5/12/2008) (Entered: 05/12/2008)
05/12/2008	182	NOTICE by Wayne Drizin, Michael Gardiner, Electronic Plastics Corporation and A Card Company re 181 MOTION for Partial Summary Judgment (Conde, Timothy) (Filed on 5/12/2008) (Entered: 05/12/2008)

55

ECF NOW MAKES THE DOCKET ENTRY NUMBER AVAILABLE.
HERE IS AN OPINION AT DE 180.

ADDITIONAL NOTES:

THIS SEEMINGLY UNREMARKABLE ELEMENT INDEED
REPRESENTS A PARADIGM SHIFT FOR CASE LAW CITATION.

THIS IS THE EXCERPT FROM A DOCKET SHEET FOR A CASE
AND SHOWS AN OPINION AS ENTRY NUMBER 180 ON THE
DOCKET SHEET

The Unique Identifier Docket Entry ID

- DE Number - the accepted reference used by federal judges and litigators to identify the document in the case.
- There is no ambiguity.
- With the docket number and court, one has a unique permanent citation.
- Thus, John B. West's dilemma of 1909 is solved - a permanent citation available at time the opinion is filed.
- Easily adapted to use in a file name.

56

THE DE OR DOCKET ENTRY NUMBER IS ROUTINELY USED BY PARTIES AND JUDGES IN FEDERAL COURT PROCEEDINGS AS SHORTHAND TO REFER TO OTHER DOCUMENTS IN THE SAME PROCEEDING, IN A CLEAR AND CONCISE MANNER.

ADDITIONAL NOTES:

THIS SHORTHAND IS APPLIED AS WELL TO REFER TO OPINIONS IN THE PROCEEDING.

The Natural Citation: Docket No. and DE No.

- E-Smart v. Drizen, No. 06-cv-05528, DE 180 (USDC NDCA 2008)
- The inevitable “universal” citation format for U.S. District Court opinions.
- Both Westlaw and Lexis now prominently include the docket number.
- For 100,000 or more opinions per year, only practical method.
- The U.S. District Courts opposed the “Universal Citation” for omitting the docket number.
- Citation rules ignoring docket numbers will be disregarded: e.g., the regrettable approval of omitting docket numbers in cites to Westlaw and Lexis.
- The natural citation is completely non-proprietary.

57

THIS SUGGEST THAT THE NATURAL AND OBVIOUS NON-PROPRIETARY CITATION TO A US DISTRICT COURT OPINION IS A COMBINATION

OF THE DOCKET NUMBER, DOCKET ENTRY NUMBER, AND THE COURT.

NOTES;

IT IS PRECISE.

IT IS CREATED AT THE TIME THE DECISION IS FILED.

IT REQUIRES NO MANAGER OR HUMAN INTERVENTION

IT PERMITS CORRELATION OF WESTLAW AND LEXIS CITES.

WEST CITE NOW INCLUDES THE DOCKET NUMBER FOR THESE OPINIONS.

SO, SOME RETHINKING OF THE AALL CITATION FORMATS IS

The Natural Citation and File Name

Citation:

E-Smart v. Drizen, No. 06-cv-05528, DE 180 (USDC NDCA 2008)

Computer File Name:

usdc-ndca-06-cv-05528-de-80-2008.pdf

ECF's Unique Hyperlink Address:

<https://ecf.cand.uscourts.gov/doc1/03514552415>

Self-Authenticating File Name:

usdc-ndca-06-cv-05528-de-80-2008-03514552415.pdf

58

EVEN THOUGH THE ALWD AND BLUEBOOK PERPLEXINGLY
HAVE ELIMINATED THE DOCKET NUMBER IN WESTLAW AND
LEXIS CITES AND OTHER CITATIONS TO CASES.
SEE MY ADDITIONAL NOTES IN THE HANDOUT.

ADDITIONAL NOTES:

THIS DISCUSSION WOULD NOT BE COMPLETE WITHOUT
MENTIONING THE

ECF SYSTEM DOCUMENT NUMBER - HERE IT IS 03514552415 -
SEEN IN THE INTERNET ADDRESS ON THE NEXT SLIDE AND
ABOVE.

usdc-ndca-06-cv-05528-de-80-2008-03514552415.pdf IS A BETTER FILE NAME FOR
VALIDATION PURPOSES.

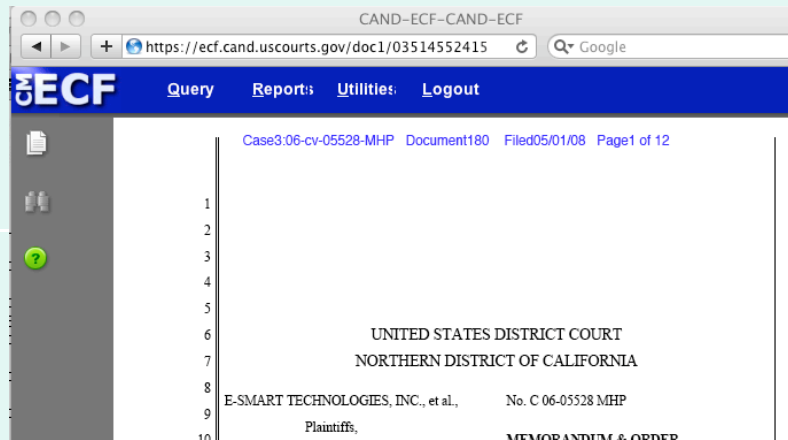
ALWD RULE 12.12(a) IS UNFORTUNATE AS TO CITATIONS OF
CASES ON WESTLAW OR LEXIS - IT OMITTS THE DOCKET
NUMBER.

RULES 12.13, 12.15(B), 12.16(C, AND 28.1 ALSO OMIT THE
DOCKET NUMBER.

RULES 12.18 ADMITS TO THE IMPORTANCE OF THE DOCKET
NUMBER.

EXCLUDING THE DOCKET NUMBER MAKES IT DIFFICULT TO

ECF System's Unique Document Identifier



Case3:06-cv-05528-MHP Document180 Filed05/01/08 Page1 of 12

THE DOCKET ENTRY NUMBER IS INCLUDED IN THE STANDARD HEADER

THAT SOME, BUT NOT ALL, DISTRICT COURTS INCLUDE IN DOCUMENTS OBTAINED FROM ECF

THE HEADER DOES NOT INCLUDE THE CASE NAME OR THE COURT NAME.

WITHOUT THE COURT NAME, IT DOES NOT UNIQUELY DEFINE THE DOCUMENT.

ADDITIONAL NOTES:

THE INTIAL NUMBER AND COLON (3:) IN THE DOCKET NUMBER ABOVE SIGNIFIES A DIVISION OF A DISTRICT COURT.

ALMOST ALL OF THE DISTRICT COURTS DO NOT HAVE DUPLICATED DOCKET NUMBERS ACROSS DIVISIONS (BE CAREFUL).

THE INTIALS ARE THOSE OF THE JUDGE AND OR MAGISTRATE. NOT PART OF THE DOCKET NUMBER.

THIS DISCUSSION WOULD NOT BE COMPLETE WITHOUT MENTIONING THE

West KeyCite®: Docket Number for Unpublished District Court Opinions



WEST'S KEYCITE INCLUDES THE DOCKET NUMBER FOR U.S. DISTRICT COURT OPINIONS.

NOTES:

I WOULD ASSUME THAT THEIR INTERNAL KEYCITE DATABASE ALSO CONTAINS THE DOCKET ENTRY NUMBER. ALTHOUGH NOT REVEALED.

IN MY VIEW, A PROPER CITATION TO WESTLAW OR LEXIS WOULD INCLUDE THE DOCKET NUMBER.

Standard ECF File Name

James C. Duff
May 7, 2008
Page 18 of 18


HyperLaw™

G. Modify the show case/goDLS CM/ECF Perl procedure so that the default file name by which a document is saved will include this same information: court, docket number, docket entry number, and date. (This enhancement would help anyone saving any Adobe PDF document from CM/ECF/Pacer!)

61

IN HYPERLAW'S WHITE PAPER TO THE FEDERAL JUDICIARY, IT
RECOMMENDED

USING THE DOCKET NUMBER AND DE NUMBER IN THE FILE
NAME.

Opinion Metadata And PDF Files

Metadata in PDF Files

- In Acrobat PDF files, standard metadata fields are in the properties screen:
 - Title
 - Author
 - Subject
 - Keywords
- Acrobat PDF allows for customized metadata fields and xml.

63

I WILL NOW ATTEMPT TO TIE THIS TOGETHER AND DISCUSS
GOOGLE SEARCHING OF PDF OPINION DOCUMENTS.

ACROBAT PDF FILES HAVE STANDARD METADATA FIELDS OR
PROPERTIES

AND PERMIT ADDITIONAL CUSTOMIZED METADATA.

For Search Engines, Acrobat Title Field Most Important

- The Acrobat PDF “Title Field” is the most significant metadata property.
- If populated with text, Google and other search engine will display the contents of the title field first.
- The Title Field is searched first generally.
- In most search engines, the search can be restricted to the title field - (caveat).
- There is not yet consensus as to how to populate and search other metadata.

64

OF THESE STANDARD FIELDS,
THE MOST IMPORTANT - FOR NOW - IS THE TITLE FIELD.

IF THE TITLE FIELD IS POPULATED WITH DATA,
GOOGLE SHOWS THE TITLE FIELD IN THE SEARCH RESULTS AS
THE FIRST ITEM.

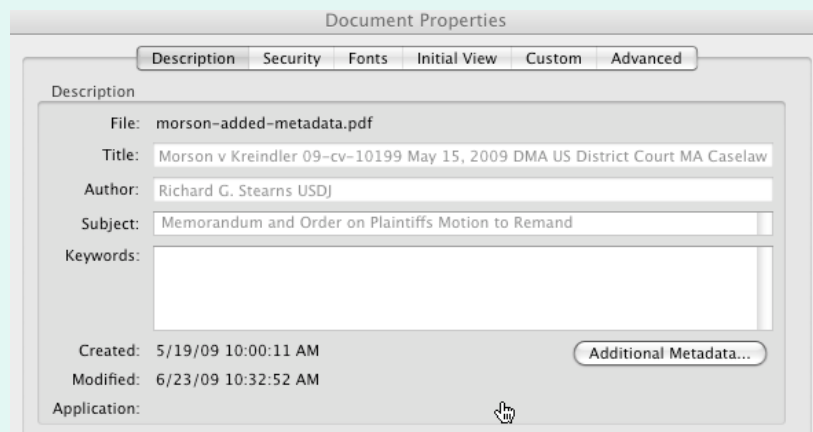
COURTS PROVIDING OPINIONS SHOULD INCLUDE CITATION
METADATA IN THE TITLE FIELD.

NOTES;
METADATA INCLUDED IN THE FILE NAME IS SEARCHED -
BUT THE FILE NAME DOES NOT APPEAR IN THE
GOOGLE SEARCH RESULTS IN BOLD - THOUGH IT IS THERE.

GOOGLE’S FEATURE THAT SEARCHES “TITLE” ONLY DOES NOT
FUNCTION WELL.

SEEM NOT TO RESTRICT SEARCHES IN PDF TITLES.
HOPEFULLY, THEY WILL FIX THIS.

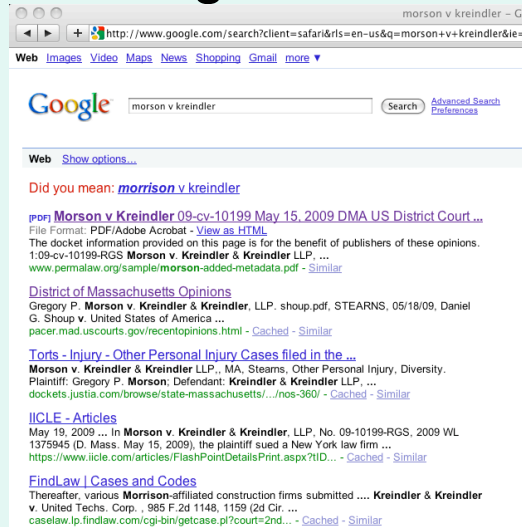
Metadata Added to PDF “title” Morson v. Kreindler



65

HERE I HAVE ADDED METADATA TO THE ACROBAT FILE FOR AN ECF OPINION DOCUMENT.

Adding metadata to Title Google Result



I ADDED THIS VERSION ON MY WEB SITE.
A GOOGLE SEARCH SEARCHING THE CASE NAME
SHOWS THIS OPINION AS THE FIRST LINE IN THE SEARCH
RESULTS.

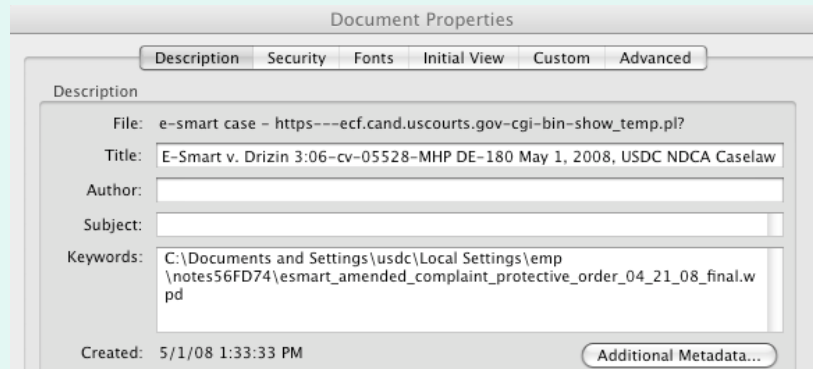
#####

After that is a version of the case on the court web site.
It is easy to see the confusion. The Court left the title field blank.

The next link is a link to just the name of the case, not the opinion
itself.

Still, the confusion is apparent.

Drizen Metadata Added to Title Field



67

HERE IS ANOTHER ECF TEST FILE TO WHICH I ADDED THE CITATION METADATA

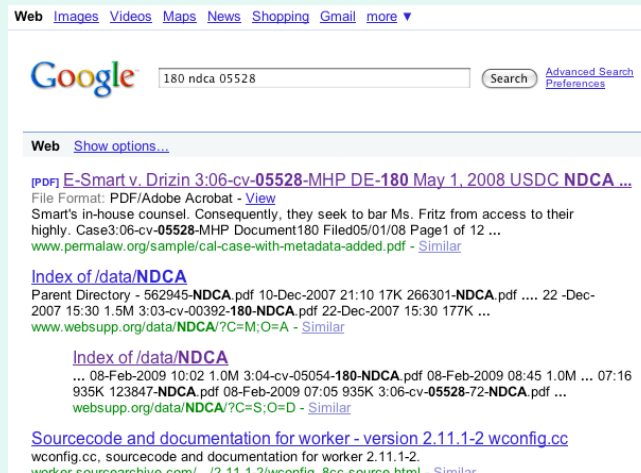
#####

IN ANY EVENT, POPULATING THE TITLE FIELD WITH THE CITATION METADATA

MAKES IT POSSIBLE TO QUICKLY AND WITH CERTAINTY LOCATE A JUDICIAL OPINION

THAT IS BEING INDEXED BY GOOGLE.

Fix Drizen Search Results



68

TO ILLUSTRATE THE FLEXIBILITY OF USING CITATION METADATA INFORMATION IN THE PDF TITLE FIELD, HERE I SEARCHED FOR THE DE NUMBER (180), THE COURT (NDCA), AND PART OF THE DOCKET NUMBER .. AND FOUND THE CASE.

NOTES:

THE NEXT RESULT IS TO A DOCUMENT AT WEBSUPP.ORG - A ORDER (NOT OPINION) IN THE SAME CASE.

BUT WEBSUPP.ORG DID NOT HAVE THE DE 180 BUT ANOTHER ORDER IN THE CASE

WebSupp.org File Naming Docket No.+DE+Court **3:06-cv-05528-72-NDCA.pdf.**

Document Properties

Description Security Fonts Initial View Custom Advanced

Description

File: 3:06-cv-05528-72-NDCA.pdf

Title: E-Smart Technologies, Inc. et al v. Drizin et al

Author: "U.S. District Court, Northern District of California"

Subject: 02/11/2007

Keywords: "STIPULATED PROTECTIVE ORDER. With Court's Supplemental Order. Signed by Judge Marilyn Hall Patel on 2/9/07. (Attachments: # 1 Supplemental Protective Order)(epb, COURT STAFF) (Filed on 2/11/2007) Office: San Francisco Case Flags: ADMOP, E-FilingNOS: Fraud or Truth-In-Lending Cause: 28:1332, Diversity-Fraud"

Created: 12/23/07 8:07:27 PM Additional Metadata...

Modified: U.S. District Court, Northern District of California

Application: U.S. District Court, Northern District of California

Advanced

69

AS PROOF OF THE INEVITABILITY OF A DOCKET/DE NUMBER
BASED CITATION:

WEBSUPP.ORG - A PRO BONO CITE WITH SOME DISTRICT
COURT OPINONS, CONCURS .

IT USES CITATION METADATA IN THE FILE NAME, AND GOOGLE
LOCATED THE DOCUMENT USING
THE CITATION METADATA.

ADDITIONAL NOTES:

WEBSUPP.ORG - THIS IS A PRO BONO SITE WHICH - ALAS- HAS
GOOD INTENTIONS BUT IS VAPORLAW - IT IS WOEFULLY
OUTDATED AND INCOMPLETE.

3:06-cv-05528-72-NDCA.pdf.

WEBSUPP HAS ADOPTED A FILE NAMING/CITATION SCHEMA
CONSISTENT WITH HYPERLAW'S
RECOMMENDATION TO THE AO.

Conclusion

70



Oakley and Martin

- Other persistent commentators have included Professor Peter Martin of Cornell.
- Robert Oakley - August 21, 1998 Comments to Senate Committee on Rules and Administration.
- Oakley discusses access to lower court opinions and law school demonstration projects.

71

TWO OTHER ADVOCATES FOR PUBLIC DISCLOSURE OF THE LAW SHOULD BE MENTIONED.

PROFESSOR ROBERT OAKLEY OF GEORGETOWN, WHOM WE MISS, AND PROFESSOR PETER MARTIN OF CORNELL.

OAKLEY IN 1998 WROTE EXTENSIVE COMMENTS TO THE SENATE ON MANY OF THESE ISSUES

<http://www.aallnet.org/aallwash/tm0729a2.asp>

AND PETER MARTIN HAS TAKEN THE TIME TO CRITICALLY ANALYZE THE REALITY OF ACCESS LIMITATIONS.

What Can You As a Law Librarian Do?

- 1. ADOPT A LOCAL U.S. DISTRICT COURT.
- 2. PICK A RECENT MONTH.
- 3. DOWNLOAD THE WRITTEN OPINION REPORTS FOR THAT MONTH.
- 4. SEE IF THE OPINIONS ARE OCR'D.
- 5. NOW, GO TO WESTLAW OR LEXIS.
- 6. SEARCH FOR ALL OPINIONS FOR THAT MONTH FOR THAT DISTRICT (BE SURE YOU ARE PICKING UP UNPUBLISHED).

72

MY TIME IS UP - THIS TOPIC IS MULTI-LEVELED AND COULD ABSORB A SEMESTER.

BUT, I HAVE TRIED TO GIVE YOU AN OVERVIEW.

WHAT STEPS CAN YOU TAKE AS LIBRARIANS -

PROVIDE THE QUALITY CONTROL, AUDITING AND COMPLIANCE ACTIVITIES THAT MAKE ANY DATABASE SYSTEM FUNCTION. CHECK THE QUALITY OF OPINION PRESENTATION AT YOUR LOCAL DISTRICT COURT.
AND THEN INFORM THE COURT OF ANY DEFICIENCIES.

What Can You As a Law Librarian Do?

- 7. SEE IF THOSE OPINIONS ARE LISTED IN THE WRITTEN OPINION REPORTS.
- 8. WRITE A POLITE LETTER TO THE CHIEF JUDGE OF THE DISTRICT SETTING FORTH THE RESULTS AS TO MISSING OPINIONS.
- 10. FOR BETTER RESULTS, IF YOU HAVE THE TIME, IDENTIFY THE JUDGE WHO IS NOT MARKING OPINIONS PROPERLY
- 11. FOLLOW UP A MONTH LATER WITH THAT SAME SET OF OPINIONS AND SEE IF THE COURT DID ANYTHING.
- 12. CONTINUE THE PROCESS AND DO NOT STOP UNTIL THE JUDGES ON THAT COURT GET WITH THE PROGRAM - AND THIS MAY TAKE MONTHS OR YEARS.

73

IF THE ADMINISTRATIVE OFFICE HAD A TRUE PUBLIC ACCESS OFFICER,
THEN THIS FUNCTION WOULD BE A ROUTINE ACTIVITY OF ITS STAFF.

And ..

- Rethink concepts of citations.
- Focus on citation information rather than citation format.
- Search engines and citation resolvers can intermediate and resolve citation information.
- Include the docket number in citations - immediately available.
- Do not promote vaporlaw: indeed take steps to “out” vaporlaw.
- Financially support alternative access sites.

74

AND FINALLY



PERSIST

75

I WILL BE AVAILABLE AFTERWARDS OUTSIDE AND LATER TODAY
...

AND I AM ALSO AVAILABLE FOR SEMINARS AND
PRESENTATIONS OF THE COMPLETE VERSION
OF THIS PRESENTATION.

THANK YOU