

## Electronic Public Access Fees and the United States Federal Courts' Budget: *An Overview*

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**Abstract:** This draft working paper examines the role of user fees for public access to records in the budgeting process of the federal courts. It sketches the policy principles that have traditionally motivated open access, describes the administrative process of court budgeting, and traces the path of user fees to their present-day instantiation. There has been considerable confusion about motivation and justification for the courts charge for access to PACER, the web-based system for “Public Access to Court Electronic Records.” Representatives from the Administrative Office of the Courts describe the policy as mandated by Congress and limited to reimbursing the expenses of operating the system. This paper identifies the sources of these claims and places them in the context of the increasing push to make government data freely accessible.

**Disclaimer:** *This is an early sketch of a more extensive paper I hope to write on the subject. I am releasing this now in the hope that it can help clarify some of the details on PACER fees, and so that I can solicit feedback and corrections early on. As such, it is just a brief tour through some of the relevant sources rather than a rigorous treatment.*

### Traditional Principles of Public Access to the Courts

Public access to court records is fundamental to the effective functioning of the Judiciary. James Grimmelman describes why this has become an important doctrine.<sup>2</sup> Democracy relies on open publication of the law. When the law is secret or obfuscated, we risk arbitrary application. Open access is fundamental to transparency and accountability. Similarly, closed or limited access is simply unfair. If “ignorance of the law is no defense,” the law must be knowable to all. Likewise, judicial consistency—the revered principle of *stare decisis*—relies on an accessible record. Equal access is also essential to equal representation in our adversarial system. If access costs money, or too much money, the rich can obtain an unjust advantage.<sup>3</sup>

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<sup>1</sup> Affiliation is for identification purposes only. The views expressed here are mine, and do not necessarily reflect the conclusions or opinions of the Berkman Center.

<sup>2</sup> <http://james.grimmelman.net/essays/CopyrightTechnologyAccess>

<sup>3</sup> In addition to these factors is the theory that when the government provides open access to raw data, third parties will make it far more useful and accessible than the government entity itself would be capable of doing. See, generally, Robinson, David G., Yu, Harlan, Zeller, William P. and Felten, Edward W., *Government Data and the Invisible Hand* (2009).

Peter Winn has described the historical development of standards of judicial information management.<sup>4</sup> There is little attention paid to these issues during periods of information technology stability, such as orally reported proceedings or physically transcribed decisions. But when the record-keeping medium undergoes radical change, significant debates arise. Secret proceedings have never fared well, and historical examples like the English Star Chamber have become epithets used to describe judicial opacity. However, some elements of proceedings must necessarily be kept secret to the broader public. Redaction and sealing are critical tools for protecting personal or commercially sensitive information. Winn believes that privacy and transparency need not be in tension. On the contrary, effective judicial information management serves both. The “practical obscurity” of paper no longer protects against privacy violating mistakes of counsel or the court, so the system needs increased attention to digital information management.<sup>5</sup>

### **Management and Budgeting of the Courts**

There is a highly structured process by which the U.S. Courts request appropriations from Congress, allocate these outlays, and determine the flow of other available funds. This process changes little from year to year, with the biggest exceptions occurring in fiscal years in which Congress fails to complete the budget process on schedule and must instead issue a continuing resolution. In either case, once procedures and practices become established, they are difficult to change.

Each year, the Judiciary produces its “Congressional Budget Justification” that lays out its requests to Congress. These so-called “yellow books” are submitted to the House Subcommittee on Financial Services and General Government of the Committee on Appropriations. This typically happens in February, and the Judiciary has considerable

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Yale Journal of Law & Technology, Vol. 11, p. 160, 2009.  
<http://ssrn.com/abstract=1138083>

<sup>4</sup> Peter A. Winn, Judicial Information Management in an Electronic Age: Old Standards, New Challenges, 2009 Fed. Cts. L. Rev. 2 (July, 2009)  
<<http://www.fclr.org/fclr/articles/html/2009/jmffedctslrev4.pdf>>

<sup>5</sup> See, e.g.: In re Killian, 2009 Bankr. LEXIS 2030 [C/A No. 05-14629-HB, Adv. Pro. No. 08-80250-HB, Chapter 13] (July 23, 2009)

back-and-forth with the subcommittee before passage of the appropriations bill, which is then usually followed by a Senate version and reconciliation of the two. The Judiciary also submits its budget to the President for inclusion in his budget, which must be included in the final draft “without change.” Historically, the President has had more latitude to change the request, but this was limited in part to insulate the Judiciary from political manipulation of their budget.<sup>6</sup>

Once the President signs the bill into law, the funds can be disbursed and the Judiciary undergoes a round of internal planning for spending them—culminating in the National Financial Plan. This plan often includes more detail than the budget justifications, and more closely describes the likely use of the funds. The Judiciary sends a copy of the plan to the appropriations subcommittee, although their approval is not required. The plan is not publicly published anywhere.

The Judiciary also prepares various reports on actual spending over the course of the year. One relevant report is the Judiciary Information Technology Fund Report, which describes the income and spending for IT-related expenses. It is mandated by 28 U.S.C. §612. This is typically published a few months into the following year, although 2008 report is still forthcoming. This report is also not publicly published anywhere.

### **The History of Paid Electronic Public Access**

Electronic public access to court records was remarkably ahead of its time. As early as the 1980s, the courts had a simple dial-up system that provided basic case information and charged by the minute. As this system proved its usefulness, Congress gave the Courts more latitude to collect and spend for this service. In 1992, Congress established the Judiciary Information Technology Fund (“JITF”, “Judiciary Automation Fund” at the time).<sup>7</sup> The fund served as a sort-of bank account for the Judiciary in which it could deposit and withdraw IT-related funds without fiscal year limitation. It instructed the courts to charge in order to fund electronic access and to deposit the funds into the JITF.<sup>8</sup>

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<sup>6</sup> 31 U.S.C. §1105(b).

<sup>7</sup> 1992 Judiciary Appropriations Act, §303(a).

<sup>8</sup> The language was subsequently modified in the 2002 E-Government Act, as noted below.

The courts chose to charge 7¢ fees per page, with a maximum charge of \$2.10 for any query. What constituted a “page” made some sense with respect to PDF files, but the Judiciary decided to also charge by the “page” for search results and docket reports even though there was no paging involved. The more results or the longer the docket, the more expensive it was—and there was no way to know before loading the page.<sup>9</sup> In 2005, the fees were raised to 8¢ per page. Some users such as pro-bono attorneys and researchers were occasionally granted no-fee access to the system, but on a court-by-court basis.<sup>10</sup> In 2006, the Courts introduced policy language that prohibited redistribution of these documents.<sup>11</sup> By 2007, the Judiciary Information Technology Fund had accumulated “significant unobligated balances,” meaning that more had been collected than had been spent. There was an extra \$146.6 million in the fund, \$32.2 million of which was from PACER fees.<sup>12</sup> The Judicial Conference considered whether to reduce fees, but “The IT Committee did not support any reduction to the fee at this time.” Instead, it chose to begin spending the money on other IT-related expenses.<sup>13</sup>

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<sup>9</sup> This structure may have had an influence on PACER’s system design as well. Peter Martin notes:

“PACER’s financial dependence on the market value of court records has had on system design. Features with reasonable prospect of furthering the foundational goals of transparency, judicial accountability, public education, and informed debate on important matters of policy have been ignored or rejected. Otherwise beneficial arrangements that might have threatened the willingness of the commercial sector to pay PACER fees have not been treated as realistic options.”

Martin, Peter W., Online Access to Court Records - from Documents to Data, Particulars to Patterns (March 14, 2008). Cornell Legal Studies Research Paper No. 08-003. Available at SSRN: <http://ssrn.com/abstract=1107412>

<sup>10</sup> Lynn Lopucki has explored the effects of this on academic researchers in depth, explaining:

“Granting fee exemptions to academic researchers would not solve the cost problem. The courts already grant such exemptions. One problem is that the courts may grant, deny, or condition them in ways that encourage researchers to portray the courts in a positive light. [Footnote: For example, after I released research that was critical of the New York bankruptcy court, that court denied my request for an exemption.] Another is that each bankruptcy or district court grants exemptions for only its own records. A researcher can conduct exempt nationwide research only by obtaining an exemption from each of the ninety-eight federal districts. Even if the application process were consolidated, the system would still have to distinguish and restrict exempt researchers. The minimum necessary restriction would be that the exempt researcher could not transfer data to nonexempt persons. The adverse consequences have already been discussed.”

LoPucki, Lynn M., Court System Transparency. Iowa Law Review, Vol. 94, 2008; UCLA School of Law Research Paper No. 07-28; Washington U. School of Law Working Paper No. 07-10-01. <http://ssrn.com/abstract=1013380>

<sup>11</sup> [http://pacer.psc.uscourts.gov/announcements/general/fee\\_sched\\_upd.html](http://pacer.psc.uscourts.gov/announcements/general/fee_sched_upd.html)

<sup>12</sup> JITF Annual Report for Fiscal Year 2006, <http://www.scribd.com/doc/2436289/>

<sup>13</sup> Summary of the Report of the Judicial Conference Committee

## Expanded Use of Public Access Fees

The decision to expand the use of PACER fees did not happen overnight. Instead, what started as a clearly circumscribed cost-recovery system evolved over a decade to become what appears to be a profit center that cross-subsidizes other IT functions of the Judiciary.

In 1997, the House included PACER-related language in the report that accompanied the Judiciary's appropriations bill. It explained,

"The Committee supports the ongoing efforts of the Judiciary to improve and expand information made available in electronic form to the public. Accordingly, the Committee expects the Judiciary to utilize available balances derived from electronic public access fees in the Judiciary Automation Fund to make information and services more accessible to the public through improvements to enhance the availability of electronic information. The overall quality of service to the public will be improved with the availability of enhancements such as electronic case documents, electronic filings, enhanced use of the Internet, and electronic bankruptcy noticing."<sup>14</sup>

As the Administrative Office began to anticipate the next generation of electronic filing, it planned to use PACER fees to construct it. To do so, it apparently suggested to the appropriations subcommittee that it this should be permitted. In 2004, the appropriators included language in their conference report that indicated that they expected the Courts to use some of these fees to fund the new case management and electronic filing systems ("CM/ECF").

"The Committee expects the fee for the Electronic Public Access program to provide for Case Management/Electronic Case Files system enhancements and operational costs."<sup>15</sup>

"The conferees adopt by reference the House report language concerning Electronic Public Access fees."<sup>16</sup>

The language reflects an apparent suggestion from the Judiciary that they begin to fund the no-fee *filing* side of their system using public fees on the *access* side of the system. The

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On Information Technology, March 2007.

<sup>14</sup> House Report 104-676

<sup>15</sup> House Report 108-221

<sup>16</sup> House Report 108-401 (Conference report)

House appropriators seem to have approved of this suggestion (albeit in report language), regardless of any restrictions on use of public access fees in the JITF statutory language.

In 2007, the courts pursued a less-well-documented approach to further expand the types of expenditures of fees from electronic public access. After appropriations were approved, the Judiciary conducted its standard Financial Plan process. It then sent the plan to the appropriations subcommittee and used a somewhat unorthodox means for requesting expanded authority.

"The fiscal year 2007 financial plan for courtroom technologies includes \$7.0 million for court allotments to be funded EPA receipts to provide cyclical replacement of equipment and infrastructure maintenance. Via this financial plan submission, the Judiciary seeks authority to expand use of Electronic Public Access (EPA) receipts to support courtroom technology allotments for installation, cyclical replacement of equipment, and infrastructure maintenance. The Judiciary seeks this expanded authority as an appropriate use of EPA receipts to improve the ability to share case evidence with the public in the courtroom during proceedings and to share case evidence electronically through electronic public access services when it is presented electronically and becomes an electronic court record."<sup>17</sup>

The Judiciary presented this proposal as an extension of its public access service. The courtroom technology program certainly includes electronic evidence presentation systems such as flat-screen monitors and "ELMO" systems.<sup>18</sup> Broadly defined, perhaps this constitutes "electronic public access," but it is distant from the PACER system that is actually generating the fees. It is unclear how, if at all, the courtroom technology program supports the electronic record dissemination functions of PACER. The Chairman and Ranking Member of the Subcommittee on Financial Services and General Government nevertheless wrote letters to the Judiciary saying that they had "no objection" to the proposal.

By 2009, the list of programs supported by PACER fees was further expanded, and expenditures on the non-PACER items increased. "In fiscal year 2009, the Judiciary plans to

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<sup>17</sup> The Judiciary Fiscal Year 2007 Financial Plans. March 14, 2007.

<sup>18</sup> <http://www.elmoussa.com/applications-legal.php>

use \$106.8 million in EPA collections and prior-year carryforward to fund public access initiatives including the following:

- Public Access Services and Applications \$17.7 million;
- Telecommunications \$8.7 million;
- EPA Equipment \$1.3 million;
- CM/ECF Development, Operations and Maintenance \$33.4 million;
- Courtroom Technology Allotments for Maintenance/Technology Refreshment \$25.8 million;
- Electronic Bankruptcy Noticing \$9.7 million;
- CM/ECF Allotments to Courts \$7.5 million;
- CM/ECF state feasibility study \$1.4 million;
- Violent Crime Control Act Notification \$1.0 million; and
- Jury Management System Public Web Page \$0.2 million.”<sup>19</sup>

The only items that clearly relate directly to PACER are the \$17.7 million and \$1.3 million items, less than 18% of the total income from PACER fees. The Judiciary has described some of these items as:

**“Telecommunications Program.** This category includes voice and data transmissions services; telecommunications equipment for new buildings; and allotments to courts for local, long-distance, and cellular service and telephone system maintenance. [...]

**Courtroom Technology Program.** This category provides for the installation and maintenance of courtroom technologies to improve the quality and efficiency of courtroom proceedings. The judiciary continues its program to equip courtrooms with a variety of technologies to improve the quality and efficiency of certain aspects of courtroom proceedings. These technologies include video evidence presentation systems, audio systems, audio and video conferencing systems, and electronic methods of taking the record. The Judicial Conference has endorsed the use of such technologies in the courtroom as they can improve trial time, lower litigation costs, facilitate fact-finding, enhance the understanding of information, and improve access to court proceedings.”<sup>20</sup>

**"Bankruptcy Noticing Center.** The AO's Bankruptcy Noticing Center (BNC) electronically retrieves data from bankruptcy courts' case management systems and prints, addresses, batches, and mails the resulting notices. The Bankruptcy Code and Federal Rules of Bankruptcy Procedure require bankruptcy courts to send these

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<sup>19</sup> The Judiciary Fiscal Year 2009 Financial Plans. May 28, 2009.

<sup>20</sup> Judiciary Information Technology Fund Annual Report for Fiscal Year 2006.

notices to all interested parties in a bankruptcy case. The BNC not only eliminates local preparation and mailing of notices by deputy clerks, it also generates notices in a fraction of the time and at a far lower cost than local noticing. The BNC, now in its eighth year, is estimated to have saved nearly \$36 million for the judiciary since its inception.”<sup>21</sup>

The courts do not appear to collect user fees for any of these services. In fact, the CM/ECF system has likely saved attorneys millions that they previously would have spent on creating physical versions of filings and having them delivered via courier.

### **The E-Government Act, Lieberman’s Inquiry, and the Judiciary’s Response**

The E-Government Act of 2002 required improved electronic services and information access from a variety of entities throughout the government. In the case of the Judiciary, it modified the language from the Judiciary Appropriations Act of 1992 that required user fees, and instead permitted the courts to charge for electronic access “only to the extent necessary.”<sup>22</sup> This same portion of statute requires that the fees be used only to “reimburse expenses incurred in providing these services.”<sup>23</sup> In the accompanying conference report, the lawmakers explained the intent of these changes.

“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.”<sup>24</sup>

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<sup>21</sup> S. Hrg. 109–330, Pt. 7, on H.R. 5576: Departments Of Transportation, Treasury, The Judiciary, Housing And Urban Development, And Related Agencies, Appropriations for Fiscal Year 2007 (p. 394), Thursday, May 4, 2006

<sup>22</sup> Public Law 107–347

<sup>23</sup> Revising 28 U.S.C. §1913

<sup>24</sup> Senate Report 107-174



Nevertheless, as outlined above, the Judiciary appears to have moved in the opposite direction—expanding the use of public access fees far beyond the marginal cost of dissemination and raising fees in 2005. Senator Lieberman, original sponsor of the E-Government Act, sent the Administrative Office of the Courts a letter on February 27, 2009 saying,

“I am writing to inquire if the Court is complying with two key provisions of the E-Government Act of 2002 (P.L. 107-347) which were designed to increase public access to court records and protect the privacy of individuals’ personal information contained in those records.

As you know, court documents are electronically released through the Public Access to Court Electronic Records (PACER) system, which currently charges \$.08 a page for access. While charging for access was previously required, Section 205(e) of the E-Government Act changed a provision of the Judicial Appropriation Act of 2002 (28 U.S.C. 1913 note) so that courts “may, to the extent necessary” instead of “shall” charge fees “for access to information available through automatic data processing equipment.”

[...]

Seven years after the passage of the E-Government Act, it appears that little has been done to make these records freely available – with PACER charging a higher rate than 2002. Furthermore, the funds generated by these fees are still well higher than the cost of dissemination, as the Judiciary Information Technology Fund had a surplus of approximately \$150 million in FY2006. Please explain whether the Judicial Conference is complying with Section 205(e) of the E-Government Act, how PACER fees are determined, and whether the Judicial Conference is only charging “to the extent necessary” for records using the PACER system.<sup>25</sup>

Senator Lieberman went on to discuss the concerns of proper redaction and sealing of electronic records.

James Duff, Director of the Administrative Office of the Courts, replied.<sup>26</sup> He explained that, absent Congressional appropriations, user fees are necessary to fund PACER. He also cited some of the correspondence between the appropriators and the courts that seemed to authorize more extended use of the fees. He also claimed that all opinions are available for

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<sup>25</sup> [http://hsgac.senate.gov/public/\\_files/022709courttransparency.pdf](http://hsgac.senate.gov/public/_files/022709courttransparency.pdf)

<sup>26</sup> <http://public.resource.org/scribd/13838758.pdf> (Duff replied in his capacity as Secretary for the Judicial Conference)

free, a policy that exists in theory but that the courts have since admitted is deficient in practice.<sup>27</sup> Duff concluded by refuting the implication that all \$146.6 million of the JITF “unobligated balances” were due to public access fees. It is unfortunate that this number served as a distraction in the debate, because the same report made clear that \$32.2 million of this balance came from public access fees. In any event, the 2009 Financial Plan would have more clearly shown how public access fees were being collected and spent, providing a better platform for discussion. Duff appeared to argue that regardless of the requirements of the E-Government’s statutory changes and accompanying report, subsequent “authorizations” by the appropriators gave the courts full latitude to collect and spend PACER fees in the current fashion.

Subsequent comments by members of the Administrative Office appear to be in line with this reasoning, including the comments of Michel Ishakian, chief of the Public Access and Records Management Division on August 31, 2009.

"We do not make a profit," says Ishakian, adding that "by law, we have to put all the money back into the program." PACER's revenues — \$76.8 million for the 2008 fiscal year — pay for system operation, maintenance and upgrades, with any unspent revenues, \$44.5 million in 2008, carried over to the next year.<sup>28</sup>

## **Lessons from the Executive Branch**

This back-and-forth occurs in the context of a wide-ranging effort on the part of the new Administration to increase government transparency and to make the raw data of the government freely available.<sup>29</sup> However, these are not fundamentally new principals. There is substantial precedent within the domain of Freedom of Information Act (FOIA) rights. When the executive branch sought to define what should be permissible with respect to user fees for FOIA requests, it issued OMB Circular 130-A.

“Statutes such as FOIA and the Government in the Sunshine Act establish a broad and general obligation on the part of Federal agencies to make government information available to the public and

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<sup>27</sup> <http://www.hyperlaw.com/topics/2009/2009-07-10-sugarman-to-ao-with-attachments.pdf> and <http://www.hyperlaw.com/topics/2009/2009-08-11-duff-ao-to-sugarman.pdf>

<sup>28</sup> <http://www.law.com/jsp/nj/PubArticleNJ.jsp?id=1202433484657&rss=nj>

<sup>29</sup> See, generally, <http://blog.ostp.gov/>

to avoid erecting barriers that impede public access. User charges higher than the cost of dissemination may be a barrier to public access. The economic benefit to society is maximized when government information is publicly disseminated at the cost of dissemination. Absent statutory requirements to the contrary, the general standard for user charges for government information dissemination products should be to recover no more than the cost of dissemination. It should be noted in this connection that the government has already incurred the costs of creating and processing the information for governmental purposes in order to carry out its mission.

Underpinning this standard is the FOIA fee structure which establishes limits on what agencies can charge for access to Federal records. That Act permits agencies to charge only the direct reasonable cost of search, reproduction and, in certain cases, review of requested records. In the case of FOIA requests for information dissemination products, charges would be limited to reasonable direct reproduction costs alone. No search would be needed to find the product, thus no search fees would be charged. Neither would the record need to be reviewed to determine if it could be withheld under one of the Act's exemptions since the agency has already decided to release it. Thus, FOIA provides an information "safety net" for the public. While OMB does not intend to prescribe procedures for pricing government information dissemination products, the cost of dissemination may generally be thought of as the sum of all costs specifically associated with preparing a product for dissemination and actually disseminating it to the public. When an agency prepares an information product for its own internal use, costs associated with such production would not generally be recoverable as user charges on subsequent dissemination."<sup>30</sup>

## **Conclusion**

As noted at the outset of this overview, this is not intended to be a rigorous treatment of the issue. Nevertheless, it hopefully contributes to the quality of discussion on the proper structure of user fees for access to electronic court records. The time is ripe for consideration of how the Judiciary might more closely align its information management practices with modern technology, practices of the other branches, and public expectations.

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<sup>30</sup> [http://clinton1.nara.gov/White\\_House/EOP/OMB/html/omb-a130.html](http://clinton1.nara.gov/White_House/EOP/OMB/html/omb-a130.html)

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## United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

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May 2, 2007

TERRENCE E. SAUVAIN, STAFF DIRECTOR  
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Mr. James Duff  
Director  
Administrative Office of the U.S. Courts  
One Columbus Circle, N.E.  
Washington, D.C. 20544

Dear Mr. Duff:

This letter is in response to the request for approval for the Judiciary's Fiscal Year 2007 Financial Plan, dated March 14, 2007 in accordance with section 113 of Public Law 110-5. For Fiscal Year 2007, Public Law 110-5 provided just under a five percent increase for the Judiciary over last year's level. With the increased funding provided in Fiscal Year 2007, \$20.4 million is provided for critically understaffed workload associated with immigration and other law enforcement needs, especially at the Southwest Border.

We have reviewed the information included and have no objection to the financial plan including the following proposals:

- a cost of living increase for panel attorneys;
- the establishment of a branch office of the Southern District of Mississippi to allow for a federal Defender organization presence in the Northern District of Mississippi;
- a feasibility study for sharing the Judiciary's case management system with the State of Mississippi, and;
- the expanded use of Electronic Public Access Receipts.

Any alteration of the financial plan from that detailed in the March 14, 2007 document would be subject to prior approval of the Senate Committee on Appropriations.

Sincerely,



Richard J. Durbin  
Chairman  
Subcommittee on Financial Services  
and General Government



Sam Brownback  
Ranking Member  
Subcommittee on Financial Services  
and General Government

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Washington, DC 20515-6015

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May 2, 2007

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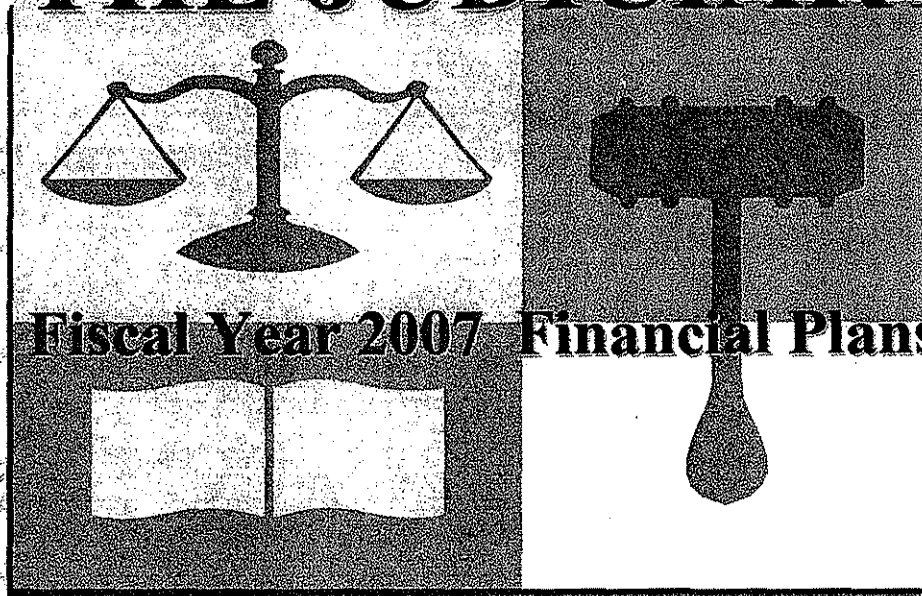
Dear Mr. Duff,

This letter is in response to the request for approval for the Judiciary's fiscal year 2007 Financial Plan, dated March 14<sup>th</sup>, 2007 in accordance with section 113 of Public Law 110-5.

We have reviewed the information included and have no objection to the financial plan including the following proposals:

- a cost of living increase for panel attorneys;
- the establishment of a branch office of the Southern District of Mississippi in the Northern District of Mississippi;
- a feasibility study for sharing the Judiciary's case management system with the state of Mississippi, and;
- the expanded use of Electronic Public Access Receipts.

# THE JUDICIARY



MARCH 14, 2007

## **ELECTRONIC PUBLIC ACCESS (EPA)**

### **Financing (\$000)**

	<b>FY 2006 Financial Plan</b>	<b>FY 2006 Actual</b>	<b>FY 2007 Financial Plan</b>	<b>Percent Change over FY 2006 Plan</b>
Collections	\$ 49,152	\$ 62,300	\$ 62,120	26.4%
Prior-year Carryforward	\$ 14,376	\$ 14,376	\$ 32,200	124.0%
<b>Total</b>	<b>\$ 63,528</b>	<b>\$ 76,676</b>	<b>\$ 94,320</b>	<b>48.5%</b>

### **SPENDING**

<b>(\$000s)</b>	<b>FY 2006 Financial Plan</b>	<b>FY 2006 Actual</b>	<b>FY 2007 Financial Plan</b>	<b>Percent Change over FY 2006 Plan</b>
EPA Program Operations	\$ 19,346	\$ 11,560	\$ 27,229	40.7%
Available to Offset Approved Public Access initiatives (e.g. CM/ECF)	\$ 36,807	\$ 32,916	\$ 41,372	12.4%
Planned Carryforward	\$ 7,325	\$ 32,200	\$ 25,719	251.1%
<b>Total</b>	<b>\$ 63,528</b>	<b>\$ 76,676</b>	<b>\$ 94,320</b>	<b>48.5%</b>

The judiciary's Electronic Public Access (EPA) program provides for the development, implementation and enhancement of electronic public access systems in the federal judiciary. The EPA program provides centralized billing, registration and technical support services for PACER (Public Access to Court Electronic Records), which facilitates Internet access to data from case files in all court types, in accordance with policies set by the Judicial Conference. The increase in fiscal year 2007 EPA program operations includes one-time costs associated with renegotiation of the Federal Telephone System (FTS) 2001 telecommunications contract.

Pursuant to congressional directives, the program is self-funded and collections are used to fund information technology initiatives in the judiciary related to public access. Fee revenue from electronic access is deposited into the Judiciary Information Technology Fund. Funds are used first to pay the expenses of the PACER program. Funds collected above the level needed for the PACER program are then used to fund other initiatives related to public access. The development, implementation, and maintenance costs for the CM/ECF project have been funded through EPA collections. In fiscal year 2007, the judiciary plans to use \$41.4 million in EPA collections to fund public access initiatives within the Salaries and Expenses financial plan including:

- ▶ CM/ECF Infrastructure and Allotments \$20.6 million
- ▶ Electronic Bankruptcy Noticing \$5.0 million
- ▶ Internet Gateways \$8.8 million
- ▶ Courtroom Technology Allotments for Maintenance/Technology Refreshment \$7.0 million (New authority requested for this item on page 46)

The fiscal year 2007 financial plan for courtroom technologies includes \$7.0 million for court allotments to be funded EPA receipts to provide cyclical replacement of equipment and infrastructure maintenance.

Via this financial plan submission, the Judiciary seeks authority to expand use of Electronic Public Access (EPA) receipts to support courtroom technology allotments for installation, cyclical replacement of equipment, and infrastructure maintenance. The Judiciary seeks this expanded authority as an appropriate use of EPA receipts to improve the ability to share case evidence with the public in the courtroom during proceedings and to share case evidence electronically through electronic public access services when it is presented electronically and becomes an electronic court record.

### **COURT OF INTERNATIONAL TRADE**

The following table details the beginning balances, deposits, obligations, and carryforward balances in the JITF for the Court of International Trade for fiscal years 2006 and 2007.

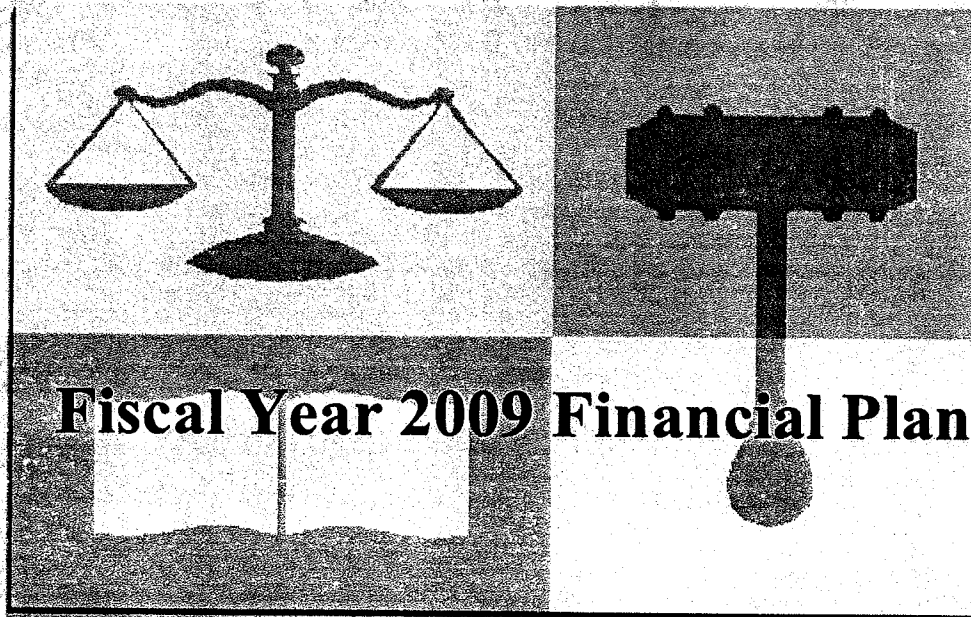
<b>Judiciary Information Technology Fund</b>	<b>FY 2006 Financial Plan</b>	<b>FY 2006 Actual</b>	<b>FY 2007 Financial Plan</b>	<b>Percent Change over FY 2006 plan</b>
Balance, Start of Year	\$ 598	\$ 605	\$ 657	9.9%
Current-year Deposits	\$ 0	\$ 200	\$ 0	0.0%
Obligations	\$ (313)	\$ (148)	\$ (357)	14.1%
<b>Balance, End of Year</b>	<b>\$ 285</b>	<b>\$ 657</b>	<b>\$ 300</b>	<b>5.3%</b>

The Court has been using the Judiciary Information Technology Fund to upgrade and enhance its information technology needs and infrastructure. Of the \$0.7 million that carried forward into fiscal year 2007 in the Judiciary Information Technology Fund, \$0.4 million is planned for obligation in the fiscal year 2007 financial plan, the remaining \$0.3 million will carry forward into fiscal year 2008.

These funds will be used to continue the Court's information technology initiatives, in accordance with its long-range plan, and to support the Court's recent and future information technology growth. The Court is planning to use these funds to continue the support of its newly upgraded data network and voice connections; to pay for the recurring Virtual Private Network System (VPN) phone and cable line charges; replace the Court's CM/ECF file server; purchase computer desktop systems and laptops for the Court's new digital recording system; replace computer desktop systems, printers and laptops in accordance with the judiciary's cyclical replacement program; and upgrade and support existing software applications.



# THE JUDICIARY



**MAY 28, 2009**

## **ELECTRONIC PUBLIC ACCESS (EPA)**

### **Financing (\$000s)**

<b>Funding Sources</b>	<b>FY 2008 Financial Plan</b>	<b>FY 2008 Actuals</b>	<b>FY 2009 Financial Plan</b>
Collections	\$ 70,130	\$ 76,803	\$ 87,135
Prior-year Carryforward	\$ 44,503	\$ 44,503	\$ 40,344
<b>Total</b>	<b>\$ 114,633</b>	<b>\$ 121,306</b>	<b>\$ 127,479</b>

### **SPENDING**

<b>Category (\$000s)</b>	<b>FY 2008 Financial Plan</b>	<b>FY 2008 Actuals</b>	<b>FY 2009 Financial Plan</b>
Obligations	\$ 94,727	\$ 80,962	\$ 106,788
Planned Carryforward	\$ 19,906	\$ 40,344	\$ 20,691

The judiciary's Electronic Public Access Program (EPA) encompasses systems and services that provide the public with electronic access to federal case and court information and that provide centralized billing, registration, and technical support services through the Public Access to Court Electronic Records (PACER) Service Center. The program provides internet access to data from case files in all court types, in accordance with policies set by the Judicial Conference and congressional directives.

Pursuant to congressional directives, the EPA program is self-funded and revenues are used to fund IT projects related to public access, including costs for the Case Management /Electronic Case Files system (CM/ECF). CM/ECF is operational in 93 bankruptcy courts, 94 district courts, 10 appellate courts, the Court of International Trade and the Court of Federal Claims. CM/ECF should be fully implemented in all courts in calendar year 2009.

In fiscal year 2009, the judiciary plans to use \$106.8 million in EPA collections and prior-year carryforward to fund public access initiatives including the following:

- ▶ Public Access Services and Applications \$17.7 million;
- ▶ Telecommunications \$8.7 million;
- ▶ EPA Equipment \$1.3 million;
- ▶ CM/ECF Development, Operations and Maintenance \$33.4 million;
- ▶ Courtroom Technology Allotments for Maintenance/Technology Refreshment \$25.8 million;
- ▶ Electronic Bankruptcy Noticing \$9.7 million;
- ▶ CM/ECF Allotments to Courts \$7.5 million;
- ▶ CM/ECF state feasibility study \$1.4 million;
- ▶ Violent Crime Control Act Notification \$1.0 million; and
- ▶ Jury Management System Public Web Page \$0.2 million.