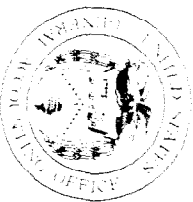


Report to the Chairman, Subcommittee  
on Government Information, Justice,  
and Agriculture, Committee on  
Government Operations, House of  
Representatives

February 1991

## INFORMATION REQUESTS

Courts Can Provide  
Documents in a More  
Cost-Effective Manner



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General Government Division

B-242498

February 13, 1991

The Honorable Bob Wise, Jr.  
Chairman, Subcommittee on Government  
Information, Justice, and Agriculture  
Committee on Government Operations  
House of Representatives

Dear Mr. Chairman:

In your December 27, 1989, letter, you asked us to determine whether federal courts are doing an adequate job distributing copies of judicial opinions and other court documents to the public. You cited the problems one publisher of court information—Tax Analysts—encountered when requesting copies of documents from federal district courts. That publisher was dissatisfied with the service courts provided in about 25 percent of their requests. After contacting several courts and three publishers, we briefed the Subcommittee on the preliminary results of our work.

In that meeting, the subcommittee expressed concern that the price a requester must pay the court for a photocopy of a document—50 cents per page—was substantially higher than what is charged by federal agencies and commercial photocopying services. At that time, we agreed to provide you with a summary of what we found at the courts relating to (1) their practices for providing access to documents and (2) the fees courts charge for making copies of documents. We also agreed to provide information on how the Sixth Circuit Court of Appeals provides copies of its decisions through subscriptions.

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## Background

Federal courts maintain written records of the judicial activity for each of their cases. These documents, beginning with the complaint that initiated the case and including all orders, answers, motions, and subpoenas filed throughout the duration of the case, are filed with the clerk of the court.

In 1853, Congress first passed a statute to specifically reimburse court clerks 10 cents per page for providing copies of judicial records. Today, the fee for a photocopy of a federal court document is 50 cents per page. An official of the Administrative Office of the U.S. Courts told us that

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courts collected about \$7 million in 1989 for photocopying documents.<sup>1</sup> These funds are deposited in the U.S. Treasury general fund. They are not to be used by the courts to offset their costs for providing copies.

One of the frequently requested court documents is the court's opinion—the formal statement of the legal reasoning the judge used in deciding the case. If a judge believes an opinion breaks new legal ground or goes beyond previous decisions, he can designate it to be published. West Publishing Company has been the primary publisher of federal court opinions for over 100 years. Their publications were the primary means for accessing court opinions until the 1970's when computer assisted legal research systems were introduced.

According to officials of the Administrative Office, lawyers are the most frequent users of court information. Although lawyers usually obtain access to court documents through West's publications and the computer assisted legal research systems, they are still the most frequent requesters of documents from court clerks. Members of the press and organizations that conduct research are also frequent requesters.

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## Results in Brief

Although all 10 district courts we contacted allow public access to their documents, procedures for providing the documents vary somewhat. The differences in the access procedures relate to acceptance of requests for documents by telephone, prepayment of fees, the availability of copying machines for public use, and acceptance of credit cards as payment.

In 1959, the Judicial Conference of the United States increased the standard fee courts charge for copies of documents from 25 to 50 cents per page.<sup>2</sup> According to the Administrative Office of the U.S. Courts, the basis for retaining the fee is that it serves as a deterrent to frivolous and irresponsible requests for copying services. Nevertheless, we found that some courts have instituted alternative procedures that enable requesters to obtain copies of court documents for substantially less than the 50 cents. Two courts we contacted allow requesters to make their own copies of court documents for about half the standard fee. Three other

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<sup>1</sup>The \$7 million also includes fees from courts that have coin-operated machines and the fees courts charge for making copies of sound recordings, microfiche, and microfilm.

<sup>2</sup>The Judicial Conference is chaired by the Chief Justice of the United States, and its membership includes the chief judge from each of the 13 courts of appeals, and 12 district court judges. Congress delegated the Judicial Conference the authority to prescribe fees for the courts in 1944.

courts contract out their photocopying to private vendors that charge the public a fraction of the standard fee. Besides being less expensive for the public, these alternatives ease the work load of the clerk's staff.

We believe the Administrative Office of the U. S. Courts should research the range of options the federal courts are using to provide access to their documents. Working through the Judicial Conference, the Administrative Office should encourage courts to adopt that option, if any, that the court clerks determine would most benefit both their operations and the needs of the requesters.

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## Objectives, Scope, and Methodology

As agreed with the Subcommittee, our objective was to collect general background information from the Administrative Office and several courts on procedures for providing access to court documents. We judgmentally selected a sample of 10 of the 94 district courts on the basis of the volume of cases filed during 1989 and on their geographical locations across the country. We also consulted with the Administrative Office in making the selections. We chose three districts with a large number of filings (central California, northern Illinois, and southern New York); four districts with a medium volume (Arizona, South Carolina, Colorado, and southern Ohio); and three districts with a small volume (South Dakota, Montana, and Rhode Island). Many of these districts have courts situated in more than one location, and the procedures for responding to document requests may vary among the locations within the district.

The information in this report represents the procedures the court had in effect at the location where the district clerk is situated. Our discussions with court staff were by telephone, except for southern Ohio where we visited the court. In each court, we spoke to the clerk, the deputy clerk, or the supervisor responsible for responding to requests for documents.

We interviewed three publishers of court information to obtain their opinions on how well district courts respond to their requests for documents. The publishers were West Publishing Company, Mead Data Central (a company that developed a computer assisted legal research system), and Tax Analysts (a company that publishes tax decisions). We selected West Publishing and Mead Data Central because they regularly request documents from all federal district and circuit courts. We

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selected Tax Analysts because in a suit they brought against the Department of Justice they criticized the performance of district court clerks in responding to their requests for documents.<sup>3</sup>

With regard to the 50 cents per page fee for photocopying court documents, we interviewed an Administrative Office official who discussed the rationale for the fee and provided us with documentation concerning recent reviews of the fee.

Further, an official in the Administrative Office's Contracts Branch identified two bankruptcy courts—St. Louis and Cincinnati—that contract out all or part of their photocopying services. We also found that 1 of the 10 district courts we contacted (Phoenix, Arizona) contracts out some of their photocopying services. We discussed the photocopying contracts with representatives of the three courts.

Finally, because U.S. Courts of Appeals follow different procedures for providing court opinions than district courts, we obtained information on how one appeals court—the Court of Appeals for the Sixth Circuit—provides opinions. We interviewed the Circuit Executive (chief administrative officer) for the Sixth Circuit and reviewed the contract file for the circuit's printing contract at the Administrative Office's Contracts Branch.

We did our work between May and October 1990 in accordance with generally accepted government auditing standards. We briefed Administrative Office officials on the facts in the report, and their comments appear at the end of this report.

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## Court Practices for Providing Access to Documents

The Administrative Office does not have a policy instructing courts how to handle requests for documents. Each court is responsible for developing and implementing procedures that meet the demands of their own court.

We found that procedures for responding to requests for court documents in the 10 districts we contacted were straightforward. If a request is made in person, the clerk's staff generally makes the copy while the requester waits. If the clerk's staff is very busy or the request is for an extremely large number of pages, the requester may have to wait, come

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<sup>3</sup>U.S. Dept. of Justice v. Tax Analysts, 109 S.Ct. 2841 (1989).

back later, or have it mailed. The clerk's staff fills requests for documents made by mail within a few days of receipt. Overall, court officials told us they are generally able to provide same-day service on copies of the documents and rarely take more than 2 or 3 working days.

In discussing access to court documents with court officials, we found that the procedures vary in four ways. First, some courts accept requests for documents made by telephone, while others require that requests be made in writing or in person. Second, half of the courts require prepayment of the photocopying fee, while the other half will accept payment after the documents are provided. Third, some courts allow requesters to make their own copies of the documents on the courts' copying machine. Finally, some courts accept credit cards for payment of the fee, while others do not. Table 1 summarizes the results of our survey of the 10 courts.

**Table 1: Procedures Used by the 10 District Courts in Responding to Requests for Documents**

District	Type of request accepted			Payment in advance	Credit cards accepted	Requester may use court's machine
	In writing	By phone	In person			
Southern New York	Yes	No	Yes	Yes	No	No
Central California	Yes	No	Yes	No	No	No
Northern Illinois	Yes	No	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	Yes	No
South Carolina	Yes	Yes	Yes	No	No	No
Colorado	Yes	Yes	Yes	No	Yes	No
Southern Ohio	Yes	No	Yes	Yes	No	No
Montana	Yes	Yes	Yes	No	No	No
South Dakota	Yes	Yes	Yes	No	No	No
Rhode Island	Yes	Yes	Yes	Yes	No	Yes

The three publishers we contacted gave us varied opinions about the performance of the courts in responding to their requests for documents. Their comments ranged from "very good" to complaints about some courts' procedures that require written requests and prepayment of the photocopying fee. Officials from Tax Analysts told us their most serious complaint is that district courts do not have a system to notify interested parties when a judge renders an opinion on a specific issue. They also said that their staff are frustrated by the problems involved in notifying the court in writing and providing prepayment of the photocopying fee and sometimes postage.

Representatives of West Publishing and Mead Data Central were generally positive about the performance of the courts in responding to their requests. They both said that overall, the courts' staffs do a good job. One publisher told us that when a particular court is slow in sending the requested documents, the publisher visits the court to determine the reason for the delay. The publisher added that once a problem is identified, the courts generally take corrective action.

## Cost of Providing Copies of Court Documents

Federal courts have charged 50 cents per page for photocopying documents for over 30 years.<sup>4</sup> In response to complaints that the fee is too high, the Administrative Office and Judicial Conference have studied the 50-cent fee four times in the last 10 years, usually as part of an overall review of fees charged by federal courts. These studies have recommended that the fee remain unchanged.

The recommendations to keep the 50-cent fee are based on certain considerations raised by court officials rather than on a specific analysis of what it costs a court to produce a photocopy. One of the studies done in 1980 polled court clerks and recommended the retention of the 50-cent fee "as a proven and reliable method of preventing frivolous and irresponsible requests for copy services...." In the most recent study (1989), the Administrative Office prepared a position paper for the Judicial Conference that concluded that the 50-cent fee was "not excessive and should be retained". It recommended retaining the fee because of the administrative costs courts incur providing photocopying services and in order to encourage the public to use alternative methods of obtaining copies of court documents instead of using stretched court resources. The personal view of the Administrative Office official who drafted the paper is that charging the 50-cent fee discourages unwarranted requests for copies. He also told us he believes it is appropriate since court staff not only make the copy but also locate the file and extract the correct document.

We identified three federal courts that contract out all or part of their photocopying services at a lower cost than the standard 50 cents per page fee—1 of the 10 district courts we surveyed and 2 bankruptcy courts identified by the Administrative Office. The courts' staff continue to provide copies for 50 cents per page if requested but give a requester

<sup>4</sup>Between 1973 and 1979, the fee for copying district court opinions was lowered to 25 cents per page; however, the fee for copying other court documents remained at 50 cents. In 1979, the 25-cent fee for opinions was increased back to 50 cents.



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the option of obtaining copies at a lower cost through their private vendors.

For 2 years, persons requesting documents from the district court at Phoenix have had the option of using contract photocopying services from a private vendor that charges 15 cents per page or a minimum of \$7.50 per request. Since there is a minimum charge, it is only less expensive to obtain copies from the vendor when the request exceeds 15 pages. When someone requests a copy of a document, the clerk's staff pulls the case file with the document and indicates which document is to be copied, and the vendor takes the entire file to its office to be copied. The vendor is to copy the document within 1 day. The requester picks the copy up at the court and the vendor bills the requester directly. If a requester wishes, the court clerk will make copies of documents for 50 cents per page. According to a Phoenix court official, during the first few months under the contract, the court closely reviewed the files after the vendor returned them to the court. Court officials found no documents missing and told us they continue to be pleased with the vendor's performance.

The other two courts with copying contracts are bankruptcy courts. The bankruptcy court in Cincinnati has a contract with a private vendor to handle an extremely high demand for copies created by one very large bankruptcy case. When a document is filed with the clerk for that case, an extra copy is provided for the private vendor. A person requesting a copy of a document from that bankruptcy case can deal directly with the private vendor located one block from the courthouse. The requester can order, pay for, and pick up the copies at the vendor's office for a fee of 3.5 cents per page. The clerk will also fill requests for copies of court documents but charges the standard 50 cents per page fee.

The St. Louis bankruptcy court has a somewhat different arrangement. The court contracted with a private vendor to install and service two coin-operated copying machines in the clerk's office. When someone requests a copy of a document, the court staff checks out the case file to the requester who can make his own copies on one of the two copying machines. The cost is 5 cents per page. If the requester wishes, the clerk's staff will make the copies but the fee is 50 cents per page.

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## Sixth Circuit Court of Appeals Provides Decisions Through Subscriptions

During fiscal year 1990, the Court of Appeals for the Sixth Circuit distributed copies of its opinions to 436 subscribers. Of that total, 56 were paying subscribers and the remaining 380 received copies of the opinions at no charge. The free subscriptions were provided to circuit and district court clerks, judges, and libraries.

Paying subscribers were charged one of two rates. Subscribers in the private sector, such as lawyers and publishers, paid \$345 for a subscription. The circuit offered a lower rate of \$85 for nonprofit organizations, such as law schools and library associations.

According to the Circuit Executive, the subscription rates were developed by estimating the total cost for producing and mailing the subscriptions for the year—printing cost, postage, and envelopes. The subscription costs were then divided by the estimated total number of copies of each opinion that would be produced. Because a large number of copies are distributed at no cost—380 of 436—the receipts from paid subscriptions were substantially less than the costs to print the opinions. For the 12 months ending June 30, 1990, the Circuit's receipts from all subscriptions totalled \$15,483. The Circuit's expenditures for printing for that same period of time were \$119,344.

The Circuit has used the same printing contractor since 1986. The contract was renewed annually through fiscal year 1990, when Circuit officials decided they could produce their opinions in a less costly manner. Beginning October 1, 1990, Circuit personnel began using their own equipment to make a limited number of copies of each opinion needed for immediate distribution. They also contracted with a local copying company to produce the remaining copies and mail them out to subscribers on a weekly basis. Circuit officials estimate that their new procedure may lower their total printing costs for the year to about \$53,000.

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## Conclusions

Supplying copies of court documents to the public is a routine task that every court clerk must provide. In carrying out that task, a clerk is free to establish document dissemination procedures that meet the needs of his or her particular court. Several clerks we contacted have supplemented the traditional method of having their own staff make every copy and charging requesters 50 cents per page. Through the initiative of individual clerks who have provided requesters with options such as contracts with private vendors, some courts have been able to reduce

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the work load of their staff while at the same time providing copies of court documents at a lower cost to the requester.

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## Recommendation

We recommend that the Director of the Administrative Office of the U.S. Courts determine the range of options courts are currently using to provide access to their documents. With this expanded information on the courts' current practices, the Director, through the Judicial Conference of the United States, should inform courts of the options available and encourage each court to adopt the one, if any, the court clerk believes is best. An option should be adopted only if it does not increase the burden on the court's staff, does not degrade the service the court currently provides, and does not increase the cost to the requester.

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## Agency Comments

We discussed our work with Administrative Office officials who have responsibility in the areas discussed in this report. They told us they understand the benefits of having courts pursue more efficient methods for providing copies of court documents. They said that the results of our work indicate that the Administrative Office should survey the remaining 84 district courts and determine what other alternatives, if any, are being used to respond to requests for copies of court documents. With this expanded information on the courts' practices, Administrative Office officials said they would be better prepared to inform the courts of possible alternatives and determine if the courts could benefit by implementing one of them. They do not, however, want the use of an alternative to place any additional burden on the courts' staffing resources.

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As agreed with the Subcommittee, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the issue date. At that time, we will send copies to interested parties and make copies available to others upon request.

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If you have any questions about the contents of this report, please call me on (202) 275-8389. The major contributors to the report are listed in appendix I.

Sincerely yours,

A handwritten signature in black ink that reads "Lowell Dodge". The signature is written in a cursive, flowing style.

Lowell Dodge  
Director, Administration  
of Justice Issues



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# Major Contributors to This Report

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