Free PACER, Free the Law:
The Past, Present, and Future of Public Access to Court Electronic Records

Rebecca Fordon, Jonah B. Gelbach, Michael Lissner

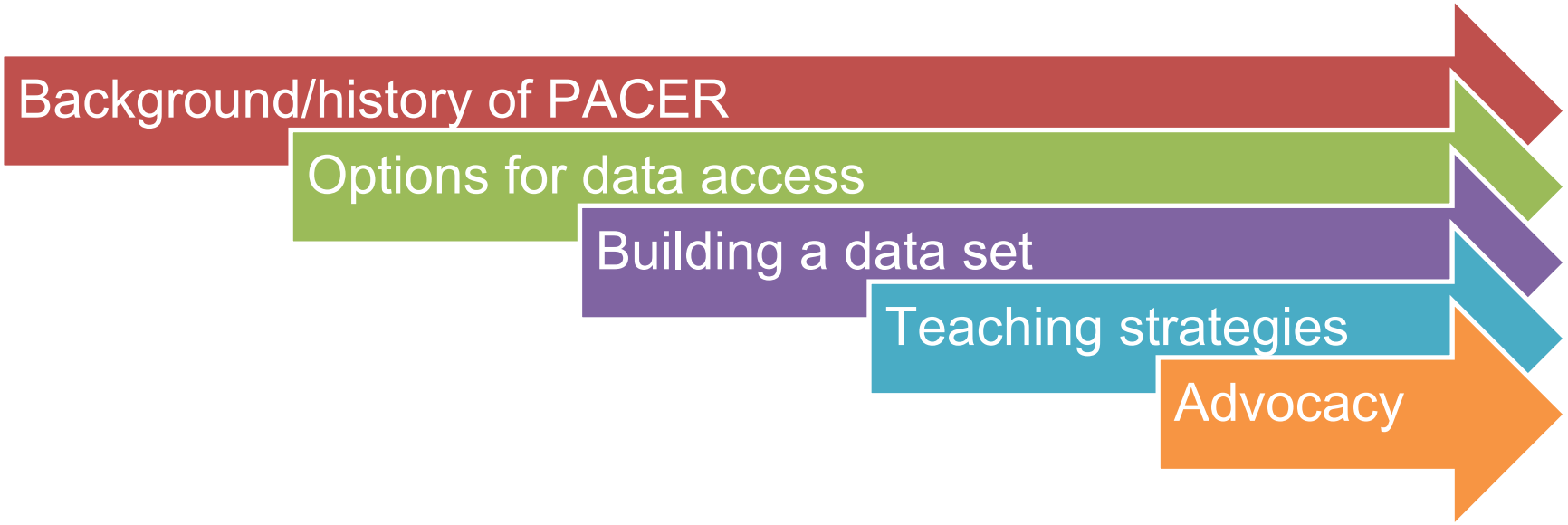
Presenters

Jonah B. Gelbach
Herman F. Selvin
Professor of Law
Berkeley Law

Rebecca Fordon
Reference Librarian & Adjunct Professor
The Ohio State University, Moritz College of Law

Michael Lissner
Executive Director
Free Law Project

Roadmap


Background/history of PACER
Options for data access
Building a data set
Teaching strategies
Advocacy

Background/History of PACER

PACER

What is PACER?

- The Public Access to Court Electronic Records (PACER) service
- Provides electronic public access to every federal court record.
- About 1.5B records — the largest paywall on the planet.
- Access to case information costs $0.10 per page, capped at $3.00 for most things.
- Began as a pay-per-minute dial-up service in 1988, and has metastasized from there.

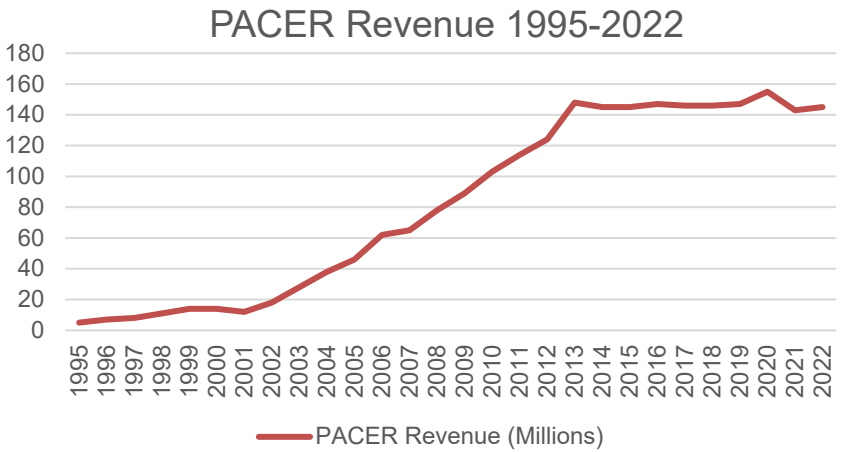
Criticism of PACER:

- Outdated, difficult to use, and vulnerable to foreign hackers
- Does not include good search functionality
- Paywall revenue used outside of legal scope (class payments forthcoming)
- Users must register for an account and provide a host of personal data, including a credit card number
- Cybersecurity issues:
  - Courts are not subject to federal cybersecurity standards.
  - Each district, appellate, and bankruptcy court runs their own version of the PACER software and can decide when, if ever, they will install security updates.
  - Significant security breach in 2020 by three hostile foreign actors.
  - AO continues to keep the details of that hack and its impact on national security hidden from Congress and the public.
- Far more expensive to operate than necessary
  - Centralizing the software and moving to a cloud-based system would save more than $60 million per year (according to Congressional Budget Office estimates)

From 2010 to 2016 PACER fees have funded courtroom technology, web-based jury services, a state of Mississippi study, sending notices to creditors in bankruptcy proceedings and sending notices to law enforcement agencies under the Violent Crime Control Act.

What does it cost?

- Many cases have over 10k entries including:
  - In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010
  - Lehman Brothers Holdings Inc.
  - Kmart Corporation
- Researching these cases using PACER could cost upwards of $20,000.
- Purchasing all of PACER would cost more than $1 billion.



Total PACER Revenue 1995 – 2022 = $2.3 billion

Options for Data Access

Nonprofits

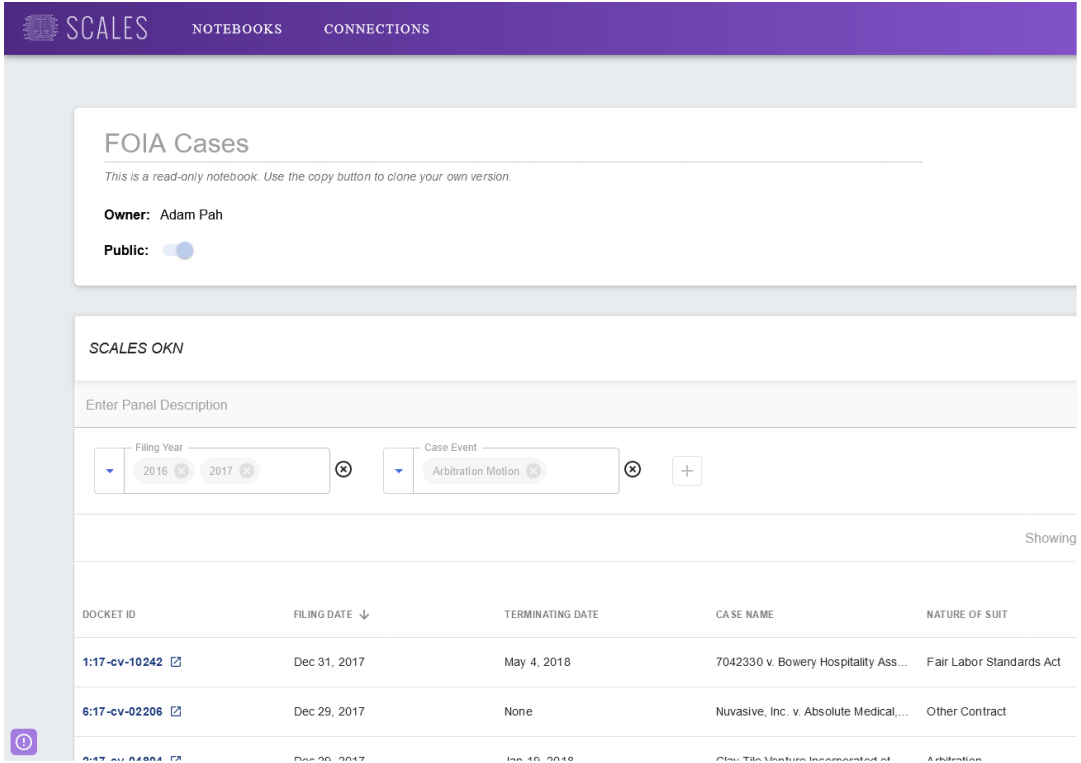
- CourtListener - RECAP
- OKN/SCALES

CourtListener.com — RECAP Archive

- Biggest open collection of federal filings online — 60M cases and 350M items
- Sourced from:
  - Crawling free opinions from PACER
  - RECAP Extension and @recap.email
  - PACER RSS feeds
  - Bulk data gathering services
- Big Cases Twitter bot & handful of topical case bots
- Full text searchable including scanned docs

SCALES/OKN

- NSF-Funded
- Currently contains records for:
  - All civil & criminal cases filed in all 94 federal district courts in 2016 and 2017
  - All cases filed in the Northern District of Illinois from 2002 to 2020



Vendors

- API access or bulk download?
- Coverage?
- Available to researchers?

epiq

trellis
LEGAL INTELLIGENCE

DOCKET ALARM

Bloomberg Law®

Lex Machina®

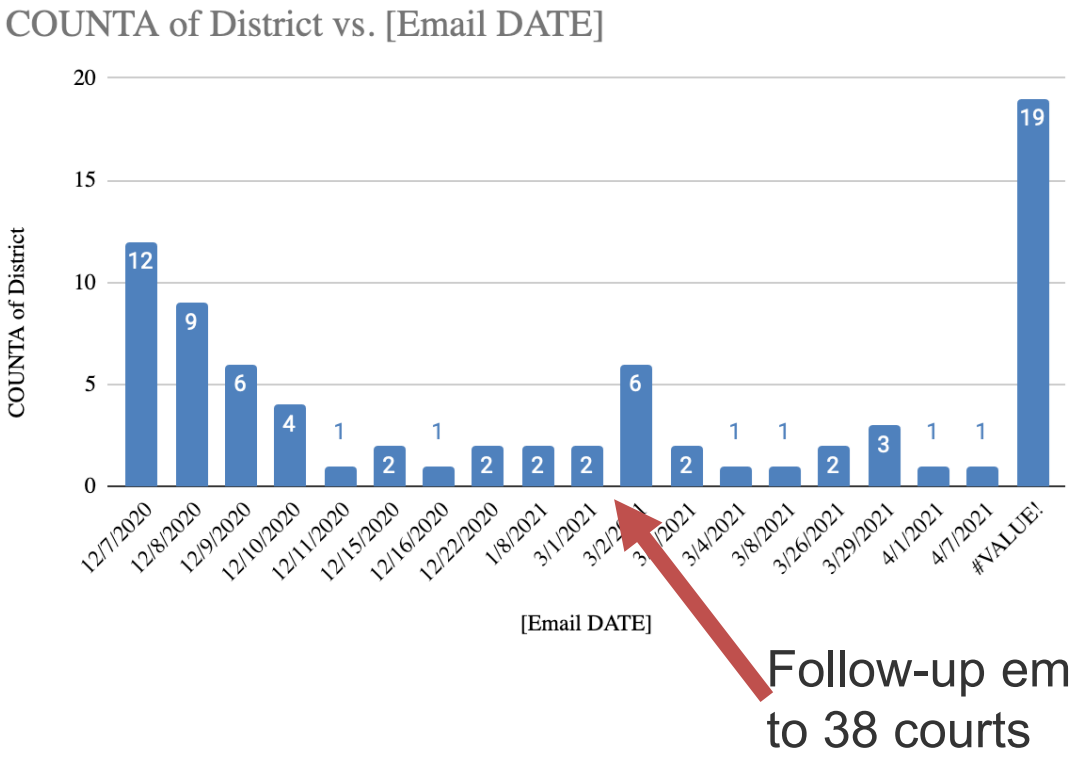
Direct from PACER

- Purchase
- Fee waiver

For bulk data, either will require a scraper

Fee exemptions

- Individual vs. multicourt
- Limited availability
- Extensive follow-up
- Restrictions on resharing



Building a Data Set

How do academics use data?

- Understand the impact of one factor upon another
- Count things and find trends

Journal of Empirical Legal Studi
Volume 1, Issue 3, 705–734, N

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Gillian K. Hadfield*

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*Professor, University of Southern Ca
mail ghadfield@law.usc.edu.
I am grateful to Ted Eisenberg, Niel
and participants in the ABA Section
the Pepperdine Law School faculty w
Diego Workshop, and the USC faculty
Tadros, Jeff Russell, and, especially, Ga
for research support.

Stanford Law Rev
Volume 68

Material Facts
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Jonah

Abstract. This Article presents emp
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according to merit. This Article begins
making such an assessment, taking int
might have changed following *Twombly*

This Article ultimately concludes that e
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* Associate Professor, University of Pe
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collection and James Cooper for his
my work on this project, as well as
Dale Baker, Josh Branson, Corey G
Woolley, and current and former U
Meredith Gage, Gary Ho, Jonathan R
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Northwestern University Law Review

Printed in U.S.A.
Vol. 107, No. 4

PUBLIC REGULATION OF PRIVATE ENFORCEMENT: EMPIRICAL ANALYSIS OF DOJ OVERSIGHT OF QUI TAM LITIGATION UNDER THE FALSE CLAIMS ACT

David Freeman Engstrom

ABSTRACT—In recent years, a growing chorus of commentators has called on Congress to vest agencies with litigation "gatekeeper" authority across a range of regulatory areas, from civil rights and antitrust to financial and securities regulation. Agencies, it is said, can rationalize private enforcement regimes through the power to evaluate lawsuits on a case-by-case basis, blocking bad cases, aiding good ones, and otherwise husbanding private enforcement capacity in ways that conserve scarce public resources for other uses. Yet there exists strikingly little theory or evidence on how agency gatekeeper authority might work in practice. This Article begins to fill that gap by offering the first systematic study of an often invoked but little studied example: Department of Justice (DOJ) oversight of qui tam litigation brought pursuant to the False Claims Act (FCA). Using an original dataset encompassing some 4000 qui tam lawsuits filed between 1986 and 2011, this Article offers evidence on numerous issues that have occupied recent judicial, scholarly, and popular debate, including the extent to which DOJ utilizes its various oversight tools, the mix of factors that drives DOJ intervention decisions, and whether DOJ's seemingly powerful impact on case outcomes can be ascribed to its merits-screening or merits-making role. The analysis mostly rejects heated claims that DOJ decisionmaking has a partisan political cast or is unconnected to case merit. At the same time, however, it uncovers substantial evidence that DOJ makes case decisions strategically, separate and apart from pure merits considerations, in response to simple resource constraints, judicial threats to its ability to police collusive relator–defendant settlements, and the identity (and corporate power) of the defendant. These findings have important implications for judicial evaluation of qui tam suits as well as leading FCA reform proposals. More broadly, the analysis opens up new theoretical and empirical avenues for thinking about optimal regulatory design at the border of litigation and administration, with applications well beyond the FCA.

AUTHOR—Associate Professor, Stanford Law School. Thanks to John Donohue, Nora Freeman Engstrom, Josh Fischman, Sandy Gordon, Eric Havian, Dan Ho, Dan Kessler, Alison Morantz, Claire Sylvia, and Jed

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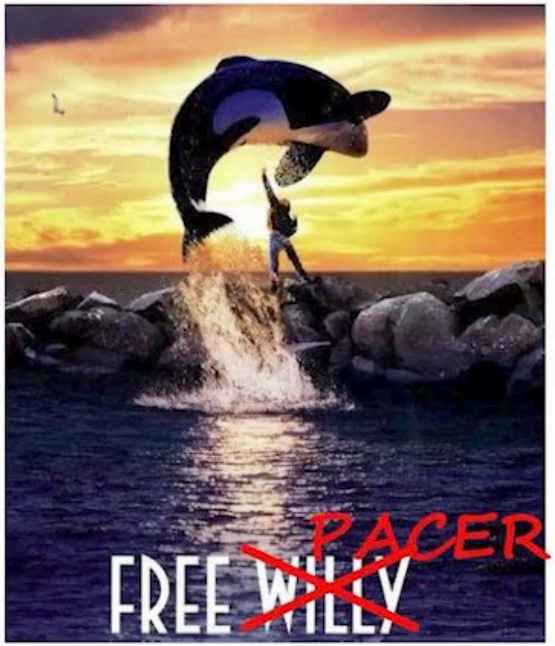
Working with data specialists

Mike Lissner

Teaching Strategies

PACER the Class

One-Shot Instruction



Advocacy

The future of PACER?

- $125 Million PACER Fees Class Action Settlement
- Legislation:
  - 2022 The Open Courts Act – not included in year end omnibus spending bill (S.2614 and H.R.5844)
  - What's next?
- The case for Free PACER
  - Jonah B. Gelbach, *Free PACER, in* LEGAL TECH AND THE FUTURE OF CIVIL JUSTICE 328 (David Freeman Engstrom ed., Cambridge University Press 2023).

Questions & Answers

Jonah B. Gelbach	gelbach@berkeley.edu
Rebecca Fordon	fordon.4@osu.edu
Michael Lissner	mike@free.law

COMPLETE THE PROGRAM EVALUATION