TAXPAYER ASSETS PROJECT
P.O. *Box* 19367, Washington, DC
tap@tap.org; voice 202/387-8030; fax: 202/234-5176

July 31, 1995

Clerk
Florida Supreme Court
Supreme Court Building
500 South Douval Street
Tallahassee, FL 32399

85,746

The Taxpayer Assets Project (TAP) is pleased to offer comments on the Florida Supreme Court's proposed adoption of Appellate Procedure 9.800(n) pertaining to citations. TAP is a non-profit organization which was started by Ralph Nader in 1988 to monitor the management and sale of government property, including government information. Over the past four years TAP has been involved in a large number of initiatives to broaden public access to government information, and was instrumental in getting such items as the SEC EDGAR database, the Congressional Record, the Federal Register and pending federal legislation available to the public via the Internet. TAP has also been very deeply involved in efforts to broaden public access to court opinions.

It appears as though the Florida Supreme Court is responding in some way to the current controversy surrounding West Publishing's assertion of proprietary ownership of the citations to published judicial opinions, by proposing to make the pinpoint citation legally optional. In our view, such a change may do little to benefit the public, and may obscure the more central issue of "who owns" Florida law.

As the Court is no doubt aware, ever since West Publishing asserted a copyright interest in its pagination of published court decisions, there has been concern that a single company, West Publishing, would be allowed to exercise great monopoly power over the market for legal information. While West has argued that citations are a value added feature which benefits from market place competition, most experts disagree.

Citations to legal opinions are mechanisms for the judge and the different parties in a proceeding to communicate. By their very nature, legal citations are monopolistic. That is, fewer citations are better than more citations, and the best system, from the standpoint of legal practitioners and researchers, is a unified, single method of citation, which allows a person to provide a single unambiguous and precise pointer to a legal text,

For more than a century West Publishing as acted as a sort of quasi-official arm of the court system, and the issue of the ownership of the citations themselves was of minor controversy or importance to most practitioners or researchers. However, with the changes in information technology, these issues are suddenly very visible and very important, With the Internet it is now possible to provide the public access to huge databases of government

information, including databases far larger than the body of published judicial opinions. There is now an explosion of services, some free and some commercial, which provide access to different types of government information, with various forms of searching mechanisms. The "value added" isn't the text of the opinions or the "citation" to the text, but the methods used to search and retrieve data.

Because of clouds over the ownership of court opinions, arising from West Publishing assertions of ownership to corrections to the text of opinions and to the accepted citations, a revolution in access to court opinions has not yet occurred. Services like WESTLAW or LEXIS (the only company licensed by West to use the entire body of West pagination) are priced at roughly $4 per minute or more, while costs for accessing other government databases are falling dramatically. If the courts would break the West monopoly, then all legal researchers would benefit greatly. Indeed, we expect that in a short time services like Microsoft Network, America Online, Prodigy, Lawyers Legal Research, Law Journal Extra or other Internet services would make the body of caselaw available to the public at huge discounts, perhaps pricing basic access to the opinions for free, while they sell other value added features for a fee. But first the courts must resolve "who owns" the law.

Courts must ensure that the law is truly in the public domain, and copies of court opinions should be available to anyone who has access to the Internet or other computer networks, In order to broaden access to legal information, courts have to make sure that private publishers, like West, do not "own" such items as corrections to text or accepted citations. The State of Florida can take a number of steps to broaden access to court opinions. Specifically:

1. The "official" version of the opinions should be available directly from the courts, including all corrections or other editorial changes. Any official "reporter" of court decisions should place the text of the decisions into the public domain.

2. Courts should use computer bulletin boards or Internet servers to disseminate copies of opinions electronically. This is not a difficult or expensive task. In a January 3, 1995 order, the U.S. Court of Appeals for the 7th Circuit said that its cost of operating a computer bulletin board system to disseminate opinions costs less than $1,000 per year, and saved the court much more than that in terms of reduced staff time for the dissemination of information. A copy of that order is attached to this letter.

3. Courts should fix citations to the opinions when they are first issued, so that anyone can immediately disseminate the information with an accepted citation. Citations consist of two items: a unique identifier for the opinion, and a method of dividing the internal text into smaller sections (the so-called pinpoint citation).

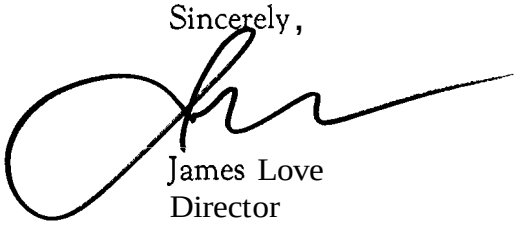
4. Proposals for a unique identifier for the case have typically focused on two alternatives, In Louisiana, the Court, docket number and date of the opinion are

used. In Wisconsin and South Dakota the state bar associations have proposed a system of sequential numbers. The American Association of Law Libraries recently adopted a report which recommends the sequential numbering system,

5. Proposals for public domain pinpoint citations have also focused on two alternatives. The State of Louisiana uses the page breaks from slip opinions. The States of Wisconsin, Colorado and South Dakota are considering paragraph numbering. Paragraph numbering is already used by the federal Military Court of Appeals and the Province of British Columbia, and is the method recommended by the American Association of Law Libraries, the American Association of Legal Publishers and most private publishers, with the notable exception of West Publishing. TAP strongly recommends paragraph numbering, as a method which is technology and vendor neutral. The key to a system based upon paragraph numbering is for the courts to assign the paragraph numbers at the time when the opinion is issued. It is also important to note that it isn't particularly important how the paragraph numbering is done, so long as everyone uses the same numbers. This is best accomplished when a single entity assigns the paragraph numbers, and the easiest way to do this is for the court itself to provide the numbers when the opinion is issued.

We are including some background information on this issue as attachments. Thank you for the opportunity to provide comments on this issue.

Sincerely,



James Love
Director
Taxpayer Assets Project