

Judicial Conference
Committee on
Court Administration and
Case Management

John R. Tunheim
Chair



Judicial Conference
Committee
on
Criminal Law

Paul Cassell
Chair

November 9, 2006

MEMORANDUM

To: Judges, United States District Courts
United States Magistrate Judges

From: John R. Tunheim, Chair *John R. Tunheim*
Committee on Court Administration and Case Management

Paul Cassell, Chair *Paul Cassell*
Committee on Criminal Law

RE: WEBSITE POSTING INFORMATION ON CRIMINAL CASE COOPERATION

We are writing to you in our capacities as Chairs of two Judicial Conference Committees: the Court Administration and Case Management Committee, and the Criminal Law Committee. Pursuant to our Committees' responsibilities regarding criminal case files, we are writing to alert you to an Internet site that purports to identify informants in criminal cases. The website, www.whosarat.com, uses publicly available information from many sources, including state and federal court case files, to identify undercover law enforcement personnel and persons suspected of cooperating with law enforcement.

A quick review of the site shows many electronic documents from federal court case files. Some of them appear to be downloaded from the courts' electronic case files system; others appear to be scanned versions of documents from paper files. While it is important to maintain public access to the courts' case files, it is equally important to ensure that the information that is publicly accessible does not endanger any case participants. Therefore, we recommend that judges consider sealing documents or hearing transcripts in accordance with applicable law in cases that involve sensitive information or in cases in which incorrect inferences may be made. The decision to seal

may extend beyond the obvious documents, such as plea agreements. Some documents contained on the website do not, from their titles, appear to include information that would reveal cooperation; however, the body of the document does contain the information (e.g., a motion to reschedule a sentencing hearing).

We also remind you that the Judicial Conference has established policies regarding the information in the criminal case files. At its March 2001 session, the Judicial Conference approved a policy restricting the routine public disclosure of the statement of reasons. (JCUS-MAR 01, p. 17.) In an August 13, 2001, memorandum regarding the Conference's policy, the Administrative Office notified the courts that "the statement of reasons should no longer be filed, stamped, docketed, or placed in the public file by the clerk's office." The memorandum may be accessed on the J-Net at <http://jnet.ao.dcn/img/assets/4545/dir1-069.pdf>. Additionally, the Judicial Conference policy on Privacy and Public Access to Electronic Case Files sets forth specific guidance on public access to documents in the criminal case file. It is available on the J-Net at <http://jnet.ao.dcn/it/ecf/ecfprivacy.html>. Section III of the guidance for criminal case files specifically advises courts to "assess whether privacy or law enforcement concerns, or other good cause, justify filing the document under seal."

Our Committees have been informed of, but have not yet received, a letter from the Department of Justice (DOJ) about the Internet site. We understand that the letter may ask for specific action from the Judicial Conference on this matter. We look forward to working with DOJ on this important issue, and both our Committees are prepared to consider its requests. In the meantime, we thought it best to alert you to the situation.

cc: Federal Public/Community Defenders
Clerks, United States District Courts
Chief Probation Officers
Chief Pretrial Services Officers