

United States District Court  
Eastern District of Pennsylvania

OCT - 5 2007  
JUDGE TUNHEIM  
CHAMBERS

CHAMBERS OF  
HARVEY BARTLE III  
CHIEF JUDGE

16614 UNITED STATES COURTHOUSE  
SIXTH AND MARKET STREETS  
PHILADELPHIA, PENNSYLVANIA 19106-1752

(215) 597-2693

October 5, 2007

The Honorable John R. Tunheim  
United States District Court  
for the District of Minnesota  
13E United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Re: Electronic Public Access to Plea Agreements

Dear Judge Tunheim:

I am in receipt of your August 30, 2007 memorandum and wish to add my thoughts on the subject.

On July 9, 2007, our court unanimously adopted a protocol to counter the website www.whosarat.com. From the outset our goal has been to prevent intimidation of and harm to witnesses and their families while at the same time to preserve public access to court documents not under seal. If this protocol saves one life or one prosecution or prevents one injury, our court firmly believes our effort has been a success.

As of September 1, 2007, all documents on the ECF system related to pleas and sentencing and orders relating to these documents (other than the Judgment and Commitment Order) have been designated on the docket as Plea Documents, Sentencing Documents, and Judicial Documents respectively, no matter what their specific content. Pacer will contain these designations for anyone accessing the system, but it will no longer make the contents of the documents available to the public electronically and will not identify whether any such documents are under seal. The "under seal" identification is understood by those operating the whosarat website to signify that the individual is a cooperator.

Under our protocol, the court, the U.S. Attorney's Office, and the counsel for the specific defendant will continue as before to have full access through Pacer to all plea and sentencing documents and related orders not under seal. It is

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also important to emphasize that all such documents not filed under seal will remain available for inspection by the public in the Clerk's Office in the courthouse. Thus, we are not creating secret dockets or keeping documents outside the public record.

We acknowledge that our protocol does not solve entirely the whosarat website problem. However, it does make it more difficult for the malefactors to achieve their objective of intimidation. No longer can they simply access our electronic files from the comfort of their off-site locations. Instead, they will have to come to the courthouse to examine documents on file if they want to know their contents.

Our protocol was developed only after in-depth discussions with and input from the U.S. Attorney's Office, the Federal Public Defender, and the Defense Bar. It has the hearty endorsement of all these groups. Although the protocol has been in effect only a short time, there have been no complaints so far.

In preparing the protocol, we reviewed Rule 49.1(e) of the Federal Rules of Criminal Procedure. We do not believe that it conflicts with what we have done. Our protocol does not deal with redaction of documents. Again, we are simply removing from our website certain documents which are still available in full in the Clerk's Office to the extent they are not under seal.

Our court sincerely hopes that our efforts will be embraced by your committee as a balanced and thoughtful approach to an extremely serious problem. We cannot lose sight of the fact that we are attempting to protect people's lives. We strongly urge that we be permitted to continue with our protocol and that we as well as other courts be allowed at this time to experiment with efforts to combat the nefarious www.whosarat.com.

Thank you for the opportunity to comment on this most important subject.

Sincerely,



Harvey Battle III

HB:fcj