



**PUBLIC.RESOURCE.ORG** ~ *A Nonprofit Corporation*

---

## **Open Source America's Operating System**

**"It's Not Just A Good Idea—It's The Law!"**

May 12, 2009

The Honorable Chief Judge Royce C. Lamberth  
United States District Court for the District of Columbia  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

Dear Chief Judge Lamberth:

I am writing to respectfully urge that the U.S. District Court for the District of Columbia and your support staff at the Administrative Office of the Courts take steps to come into compliance with the laws and rules that require you to protect the privacy of the people that appear before you. Compliance should not be deferred or ignored because it might cost money, reduce revenues, or is otherwise inconvenient.

Please allow me to briefly lay out the grounds for this petition:

- On **05/03/2008**, we submitted an audit of 50 years of Court of Appeals decisions to the Administrative Office of the Courts and to the Judicial Conference. The audit outlined numerous privacy violations.
- On **07/16/2008**, the audit was acknowledged by Judge Rosenthal, Chair of the Committee on Rules of Practice and Procedure of the Judicial Conference, who thanked us for our "commitment to improving the court system" and urged us to keep the judiciary informed of our ongoing work.
- On **10/03/2008**, we notified the Administrative Office of the Courts of substantial violations of privacy requirements in 30 district courts.
- On **10/24/2008**, we submitted the full audit to the Administrative Office.
- On **12/30/2008**, after repeated attempts to raise the issue at the Administrative Office of the Courts, we directly informed you of the partial audit of your court.
- On **01/28/2009**, you responded with confirmation that the documents uncovered in the partial audit were in violation and had been removed from public view.
- On **02/20/2009**, we again offered to assist the District Court of the District of Columbia in finishing the audit of your database.
- On **02/27/2009**, the Chairman of the Senate Committee on Governmental Affairs and Homeland Security wrote to the Judicial Conference and expressed strong concern that "not enough has been done to protect personal information contained in publicly available court filings."
- On **03/26/2009**, Judge Rosenthal responded to Chairman Lieberman, acknowledging that "the reported instances of personal identifier information contained in court filings is disturbing and must be addressed."

It is clear that the PACER database maintained by the District Court and supported by the Administrative Office of the Courts still contains numerous instances of violations of the E-Government Act and of Judicial Conference Rules of Practice and Procedure. As Judge Rosenthal said, the problems are "very disturbing," yet neither the District Court nor your support staff at the Administrative Office of the Courts have addressed the issue.

Despite weekly calls over the last three months to your very capable and courteous personal staff, our request to continue the audit of your database to uncover problems has not been acted upon. Since our initial audit of appellate decisions over a year ago, I have not once received a return phone call, letter, or email from your support staff at the Administrative Office of the Courts.

Indeed, our efforts to continue the audit of PACER documents in your court have met with much more than indifference. There has been an active effort by the Administrative Office of the Courts to dissuade us from continuing our work.

As we discussed when we met in your chambers on 4/16/2008, the Administrative Office of the Courts dispatched the FBI on what can only be called a fishing expedition a full 6 months after we notified them that we had conducted an audit of the PACER system. Sending the FBI after us appeared to be a direct result of embarrassing publicity that resulted from the U.S. Senate and New York Times investigations into their operations.

While we do not need active cooperation from the Administrative Office of the Courts to conduct our audit, I must say that spending time in an interrogation room with two armed FBI Special Agents was not a very good use of taxpayer dollars and certainly had a chilling effect on our continued efforts to audit the PACER system.

As you know, FBI investigations are meant to find the facts and collect evidence, but there are no facts in question here and the "evidence" is published on the Internet. I sent direct notice of all these facts by registered mail to the Administrative Office and to numerous judges, and would happily have told the Administrative Office of the Courts exactly what I told you, the FBI, the New York Times, and 3 oversight committees in the U.S. Congress.

There are no facts in dispute and no laws were broken, and these actions by the Administrative Office of the Courts appear to be no more than a blatant attempt to intimidate whistleblowers into silence.

For a year, we have tried to talk to your support staff at the Administrative Office of the Courts. For 6 months, we have offered to help the District Court of the District of Columbia uncover privacy violations and fix your database. It is immaterial if you accept our offer of help or simply fix these problems on your own, but I do urge you to pick a course of action and do something soon.

Respectfully yours,

Carl Malamud  
President & CEO  
Public.Resource.Org