



March 30, 2015

HONORABLE LEE H. ROSENTHAL
United States Courthouse
515 Rusk Street, Room 11535
Houston, Texas 77002

RE: Ongoing Privacy Breaches by the United States Courts

Dear Judge Rosenthal:

In 2008, I sent to your attention 3 audits of privacy violations in the proceedings of United States Courts:

- On May 3, 2008, I notified you of a large number of Social Security Numbers in the opinions of the U.S. Court of Appeals. A redacted copy of that audit is viewable at this URL: <https://public.resource.org/scribd/7512579.pdf>
- On October 3, 2008, I notified you of a preliminary audit of privacy violations in 12 U.S. District Courts. A redacted copy of that audit is viewable at this URL: <https://public.resource.org/scribd/7512580.pdf>
- On October 24, 2008, I notified you of the completed audit of privacy violations in 32 U.S. District Courts. A redacted copy of that audit is viewable at this URL: <https://public.resource.org/scribd/7512583.pdf>

In addition to my communications directly with you, I sent the audit results 3 times to the Chief Judges of selected U.S. District Courts. Some of those communications can be found at the following URL: <https://public.resource.org/uscourts.gov/>

You took a number of actions in response to these audits:

- On July 16, 2008, you acknowledged the audit of the U.S. Court of Appeals. A copy of that letter is viewable at this URL: <https://public.resource.org/scribd/7512576.pdf>
- On March 31, 2009, you responded to a formal inquiry from the United States Senate in a joint letter with Mr. Duff. A copy of that letter is viewable at this URL: <https://public.resource.org/scribd/13838758.pdf>
- On April 16-17, 2009, the subject was discussed at a meeting of the Advisory Committee on Appellate Rules. A copy of the minutes of that meeting may be found at the following URL: <http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Minutes/AP04-2009-min.pdf>
- On August 24, 2009, an extensive analysis of my audit results was conducted by the Administrative Office of the U.S. Courts. A copy of that analysis is viewable at this URL: <http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/SSN%20Memo%20-%20082409.pdf>

- On November 5-6, 2009, the matter was discussed by the Advisory Committee on Appellate Rules. A copy of the briefing materials can be found at the following URL: <http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Agenda%20Books/Appellate/AP2009-11.pdf> (See page 19.)
- On February 3, 2010, I met with you in chambers to discuss PACER and privacy issues.
- On January 6-7, 2011, the Privacy Subcommittee reported to the Committee on Rules of Practice and Procedure. A copy of those materials may be found at the following URL: http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Agenda%20Books/Standing/ST2011-01_Vol_II.pdf (See page 33 and page 350.)

Given the level of attention that this issue has received both inside the judiciary and in the mainstream press, I am very distressed to have to report to you a major privacy breach by the Administrative Office of the United States Courts and by several of the U.S. District Courts that were the subject of our audits.

Specifically, an unredacted version of my October 3, 2008 letter to you has been posted on the uscourts.gov web site. The unreacted version of the letter contains a 20-page list of case numbers along with the document containing SSNs and a listing of those SSNs. In other words, this document is a one-stop shopping center for identity theft and it has your name on it.

The document is posted in two places:

- The first page linking to one redacted version of the document is the 2008 Civil Rules Suggestions Page. I have attached a copy of that web page as Exhibit 1.
- In addition, the 2009 Appellate Rules Suggestion Chart links to a second copy of the unredacted document. I have attached a copy of that web page as Exhibit 2.
- Exhibit 3 contains one of the two copies of the unredacted document in question that I obtained from the uscourts.gov web site yesterday.

The uscourts.gov web site does not operate using modern technical standards, so I am unable to get the date created from the web server they run. However, by examining the Internet Archive's Wayback Machine, I can say with some confidence that the pages have been posted since at least September 27, 2012.

On a hunch, I pulled up some of the dockets mentioned in the letter. To my horror, it appears that the U.S. Courts simply failed to remove those offending documents. For example, you will find attached as Exhibit 4 an example containing several pages of unredacted privacy information from the U.S. District Court for the Northern District of Illinois. This is despite the fact that I sent 3 notifications by Federal Express to that court.

It has been almost 6 years since I notified the United States Courts of these privacy issues. That the specific documents that I flagged are still available for purchase on the PACER system is outrageous. It is particularly outrageous given the assurances given to the United States Senate. It is particularly outrageous given the aggressive and personal actions of retribution taken by the Administrative Office in response to the report of these privacy breach in the New York Times and other media publications.

As you know, Judge Rosenthal, I am a huge admirer of how you handled this situation in 2008, and I have expressed my admiration for your actions several times. You were quick to contact me and I was very impressed with your responsiveness. However, it is clear that the Administrative Office does not share your attitude, and their lax and complacent approach to privacy is truly distressing. Posting the unredacted letter on a public web site is personally embarrassing to me and I suspect it is embarrassing to you as well.

At this point, I have no alternative but to personally examine every document listed in that letter to determine which of those docket items are still available on PACER. This will cost me hundreds of dollars in PACER fees and I respectfully submit that the U.S. Courts should not charge me for this access. If appropriate, please consider this letter an application for a PACER Fee Exemption.

I would also like to respectfully submit that the U.S. Courts should take 3 actions with the utmost urgency:

- First, the offending letter should be removed from the uscourts.gov web site and tools such as Google Webmaster Tools should be used to try and remove copies of the document from search engine caches.
- Second, the U.S. Courts should immediately examine every document listed in both the October 3 and October 24 audit and determine if those items are still visible on PACER. If they are, the Court Clerks should be commanded to immediately remove those documents from view. and the filing attorney in each case should be subjected to appropriate disciplinary action.
- Third, given the long-term nature of this particular breach, I believe it is imperative that the Administrative Office of the U.S. Courts notify all the parties involved, including the attorneys on both sides of the case, the plaintiffs and defendants, and (most importantly) any individuals whose privacy was breached in these actions. I believe the Administrative Office of the U.S. Courts should also offer free credit monitoring services to all those individuals.

I am sorry to have to write to you today with this unpleasant news, and I do hope we will have the opportunity to meet again in the future. I very much enjoyed my visit with you earlier and remain eager to assist the United States Courts as it faces the challenges of the Internet.

Respectfully yours,



Digitally signed by Carl
Malamud
DN: cn=Carl Malamud,
o=Public.Resource.Org,
ou,
email=carl@media.org,
c=US
Date: 2015.03.30
05:55:57 -07'00'

Carl Malamud
Public.Resource.Org

EXHIBIT 1

Web Page
2008 Civil Rules Suggestions

**CONTAINS CONFIDENTIAL
INFORMATION**

2008 CIVIL RULES SUGGESTIONS

08-CV	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
<u>08-CV-A</u>	B. Sachau	07/30/08	Rules 30, 33 & 36	11/08 – Advisory Committee considered and declined to take action
<u>08-CV-B</u>	Dean Michael Moffit	08/19/08	Pleadings Standards	10/09 – Advisory Committee considered; consolidated into ongoing Twombly & Iqbal study
<u>08-CV-C</u>	Kenneth A. Lazarus, Esq. and Professor Paul Rothstein	10/27/08	Rules 8, 12, 16 & 37	11/08 – Advisory Committee retained on agenda; consolidated into ongoing Twombly & Iqbal study 10/09 – Advisory Committee considered
<u>08-CV-D</u>	Public.Resource.org (Carl Malamud)	10/30/08	Privacy Rules	Pending consideration
<u>08-CV-E</u>	Akua Asamoah	12/05/08	New Form/Form Revision	Pending consideration

EXHIBIT 2

Web Page
2009 Appellate Rules
Suggestions

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INFORMATION**

APPELLATE RULES SUGGESTIONS

2009 APPELLATE RULES SUGGESTIONS CHART

09-AP	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
09-AP-A	ABA Council of Appellate Lawyers (Bennett Evan Cooper and Steven Finell)	02/17/09	Rule 29	Pending
09-AP-B (08-AP-007)	Daniel Rey-Bear	03/20/09 10/14/09	Rule 1(b)	Pending
09-AP-C	Bankruptcy Rules Committee	09/09	Consider possible FRAP amendments in the light of project to revise Part VIII of the Bankruptcy Rules	Pending
09-AP-D	John Kester	12/10/09	Implications of Mohawk Industries, Inc. v. Carpenter	Pending

2008 APPELLATE RULES SUGGESTIONS CHART

08-AP	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
08-AP-A	B. Sachau	08/27/08	Rule 29	Pending
08-AP-B	Public.Resource.Org (Carl Malamud)	10/30/08	Privacy Rules	Pending
08-AP-C	Honorable Frank H. Easterbrook		Rule 26	Pending
08-AP-D	Peder K. Batalden		Rule 4	Pending
08-AP-E	Public Citizen Litigation Group		Rule 4	Pending
08-AP-F	Members of the Seventh Circuit Bar Association		Rule 4	Pending
08-AP-G	Appellate Committee		Form 4	Pending
08-AP-A (2)	Honorable Mark R. Kravitz		Rule 3	Pending
08-AP-B (2)	Honorable Alan D. Lourie		Rule 28.1	Pending

2007 APPELLATE RULES SUGGESTIONS CHART

07-AP	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
07-AP-A	Robert Kantowitz	08/29/07	Rule 32.1	unknown
07-AP-B	Kay Sieverding	11/20/07	Electronic Case Filing and Habeus Corpus Rules	unknown
07-AP-C	Criminal Rules Committee	06/05/08	Rules 4 & 22	Closed
07-AP-D	Stephen P. Stoltz	05/06/08	Rule 26	Closed
07-AP-E	M. Miller Baker	05/29/08	Rule 4	Pending
07-AP-F	Honorable Jerry E. Smith	-	Rule 35	Pending
07-AP-G	Forms Working Group (Honorable Harvey E. Schlesinger)	11/07	Form 4	Pending
07-AP-H	Appellate Rules Committee	04/08	Warren v American Bankers Insurance of Florida (2007)	Pending
07-AP-I	Honorable Diane P. Wood	04/08	Rule 4	Pending
07-AP-B (2)	Civil Rules Committee	04/07	Court Request for Relief	Closed
07-AP-D (2)	Subcommittee on Time Computation	03/07	Define "State"	Closed
07-AP-E (2)	Mark Levy	11/07	Bowles v. Russell (2007)	Pending

2006 APPELLATE RULES SUGGESTIONS CHART

06-AP	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
None	-	-	-	-

2005 APPELLATE RULES SUGGESTIONS CHART

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05-AP	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
05-AP-A	Roy H. Wepner	01/26/05	Rule 35 & 40	unknown

2004 APPELLATE RULES SUGGESTIONS CHART

04-AP	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
04-AP-A	Standing Committee – Style Subcommittee	02/03/04	Rules 27 a& 28.1	unknown
04-AP-B	Dennis R. Cookish	04/13/04	Rule 12	unknown
04-AP-C	Professor Phillip A. Pucillo	06/07/04	Rule 4	unknown
04-AP-D	Committee on Court Administration and Case Management of the Judicial Conference of the United States (Honorable John W. Lungstrum)	08/02/04	Electronic Case Filing	unknown
04-AP-E	Gary Bowden	10/13/04	Form 4	unknown

2003 APPELLATE RULES SUGGESTIONS CHART

03-AP	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
03-AP-A	Honorable Jon O. Newman	01/08/03	Rule 4	unknown
03-AP-B	Professor Joseph R. Weeks	03/19/03	Require written explanations for dispositions	unknown
03-AP-B (Addendum)	Tom G. Glass	05/05/03	Required written explanations for dispositions	unknown
03-AP-C	Professor Phillip A. Pucillo	08/14/03	Rule 4	unknown
03-AP-D	Mark D. Stern	11/18/03	Procedures for filing briefs	unknown

2002 APPELLATE RULES SUGGESTIONS CHART

02-AP	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
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02-AP	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
None		-	-	-

2001 APPELLATE RULES SUGGESTIONS CHART

01-AP	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
01-AP-A	Brian Wolfman	03/01/02	Rule 3	Closed

2000 APPELLATE RULES SUGGESTIONS CHART

00-AP	NAME OF INDIVIDUAL AND/OR ORGANIZATION	DATE REC'D	RULE OR FORM	STATUS
00-AP-A	Jason A. Bezis	01/28/00	Rules 26 & 45	unknown
00-AP-B	Honorable Gino J. Agnello	04/11/00	Rule 4	unknown
00-AP-C	Stuart Buck	09/14/00	Rule 22	unknown
00-AP-D	Honorable Michael Boudin	11/17/00	Rule 29	unknown

EXHIBIT 3

**Unredacted Letter
Downloaded From 2 Locations
on the Uscourts.Gov Web Site on
March 30, 2015**

**CONTAINS CONFIDENTIAL
INFORMATION**



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Public Works Projects for the Internet

October 3, 2008

08-AP-B

The Honorable Lee H. Rosenthal
Chair, Committee on Rules of Practice and Procedure
Judicial Conference of the United States
Washington, D.C. 20544

08-CV-D

Dear Judge Rosenthal:

I would like to thank you for your letter of July 16, 2008 on the subject of personal identifiers in appellate opinions. Your kind words are very much appreciated and I am pleased to report that the Clerks of the Courts of the Second, Fifth, and Ninth Circuits wrote to me indicating they were in the process of redacting social security numbers.

One issue in regards to appellate opinions that I would like to bring to your attention is the status of Alien Identification Numbers. It is the position of the Clerks of the Courts that Alien Identification Numbers do not fall within the enumerated list of "individuals' Social Security and taxpayer identification numbers, names of minor children, financial account numbers, dates of birth, and, in criminal cases, home addresses." I do understand that a literal reading of the list might preclude Alien Identification Numbers and thus bring it to your attention in case the issue had not been previously considered.

I am also writing to you today to report on preliminary results of an audit of documents submitted to the United States District Courts. A social security number scan of these documents shows approximately 2,282 suspect documents in 32 different districts. The social security numbers are present in documents filed in earlier years, but also in many documents filed in 2008. In some cases, it appears that the social security numbers for attorneys and state employees are being disclosed.

While most documents contain the social security number for a single individual, we have found lists of dozens of individuals. In some cases, the name, date of birth, social security number, and even financial account numbers are present, making this "one-stop shopping" for potential identity theft.

I have enclosed for your reference a DVD of the 2,282 suspect documents. You will find attached to this letter as Appendix A a detailed analysis of 13 of the District Courts based a systematic manual scan of the documents flagged by our program. We will be completing the same detailed analysis of the remaining 19 districts for which we have data, and would be happy to forward that information to you if you wish.

It is worth mentioning that the number of privacy incidents varies widely by district. For example, we were unable to find any social security numbers for the Southern District of Texas or the District of Oregon, and the District of Minnesota had only 6 cases with problems, all from 2005 and 2006.

After working with government data for two decades, I am always impressed by the impact the Internet has on the dissemination of public data. The process of learning how to disseminate public databases effectively is one of trial and error and of progressively perfecting the process. The rules and procedures to protect personal identifiers developed by the Committee on Rules of Practice and Procedure are, I believe, a very important step in this regard.

Based on our experience with scanning District Court documents, I hope you will permit me to offer three suggestions that might provide additional support to the goal of broad dissemination of public information while protecting the privacy of individuals.

First, there is no obvious way for a member of the public or a nonprofit research group such as ours to alert the Administrative Office of the Courts to privacy issues. No system is perfect, and the feedback from users of the system is an essential step in finding mistakes before they spread. Many organizations have found that appointing a Chief Privacy Officer provides a single point of contact for the public.

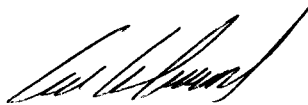
Second, when problems are found, there does not appear to be a systematic way of alerting the providers of legal information. Even though the social security numbers from appellate opinions were removed from court web sites, they are still present on West Law and Lexis Nexis. A notification mechanism when cases are withdrawn or changed would be extremely useful. Such a system should go beyond the commercial services to include the large number of nonprofit groups that disseminate the law. Our own computers at Public.Resource.Org, for example, serve 1 million unique visitors per month, and that number is far larger when we include other sites that copy our data.

Third, while the first line of defense for protection of privacy is with the lawyers who file documents in the PACER system, we must assume that no system is perfect. I have attached as Appendix B a simple one-line PERL program based on open source tools which we use to scan for social security numbers. We scan a database for potential hits and then look at each case manually. If we find a social security number, we use redaction tools to remove that information.

There are no doubt far more sophisticated tools available, but I offer this simple mechanism as an example and would be more than happy to discuss these tools with technical staff if that is useful.

Thank you again for your responsiveness and quick action on the matter of Appellate decisions. It is gratifying to see the commitment towards the protection of personal privacy, both in the Judicial Conference and in the day-to-day operations of the Clerks of the Court.

Very truly yours,



Carl Malamud
President & CEO
Public.Resource.Org

cc: Mr. Peter McCabe, Esq.
The Honorable James C. Duff

Appendix B - Simple Social Security Scanner for PDF Files

```
#!/usr/bin/perl

# Note: This program is open source.  No restrictions on reuse.
# This program assumes PDF files with OCRd text.

# Regexp::Common is an open source toolkit available on Search.CPAN.Org.
use Regexp::Common qw /SEN/;
use File::Find;

# get args
my @files ;

# pdftotext is part of the open source XPDF toolkit.
# available from http://www.foolabs.com/xpdf/
my $pdftotext = "/opt/csw/bin/pdftotext" ;

if ( $ARGV[0] eq "" ) { print "usage: $0 [dir]\n" ; exit ; }

# use the "wanted" subroutine to filter out non-pdf files.
find(\&wanted, @ARGV) ;

foreach (@files) {
    my $filename = $_ ;
    my $counthits = 0 ;

    # pdftotext generates too many minor error messages, so we discard them.
    open STDERR, '>/dev/null' or die "Can't write to /dev/null: $!";
    open ( SCANME, "$pdftotext -layout $filename -|" ) ;

    while (<SCANME>) {
        while ( /$RE{SEN}{USA}{SSN}{-sep => '[\255\-\]'}{-keep}/g )
        {
            # check for 000-00
            if ( ($2 eq "000") && ($3 eq "00") ) { next ; }
            $counthits++ ;
            if ( $counthits == 1 ) { print "$filename: " ; }
            print "$2-$3-$4 " ;
        }
    }

    # print total number found
    if ( $counthits > 0 ) { print "$filename: $counthits\n" ; }
}

sub wanted {
# only operate on pdf files
    /\. [pP][dD][fF]$/ or return;
    push ( @files , $File::Find::name ) ;
}
```

EXHIBIT 4

**Document Containing
Unredacted SSNs Downloaded
From PACER on March 30, 2015**

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EXHIBIT A

