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## Web Sites Listing Informants Concern Justice Dept.

By [ADAM LIPTAK](#)

There are three “rats of the week” on the home page of [whosarat.com](#), a Web site devoted to exposing the identities of witnesses cooperating with the government. The site posts their names and mug shots, along with court documents detailing what they have agreed to do in exchange for lenient sentences.

Last week, for instance, the site featured a Florida man who agreed in September to plead guilty to cocaine possession but not gun charges in exchange for his commitment to work “in an undercover role to contact and negotiate with sources of controlled substances.” The site says it has identified 4,300 informers and 400 undercover agents, many of them from documents obtained from court files available on the Internet.

“The reality is this,” said a spokesman for the site, who identified himself as Anthony Capone. “Everybody has a choice in life about what they want to do for a living. Nobody likes a tattletale.”

Federal prosecutors are furious, and the Justice Department has begun urging the federal courts to make fundamental changes in public access to electronic court files by removing all plea agreements from them — whether involving cooperating witnesses or not.

“We are witnessing the rise of a new cottage industry engaged in republishing court filings about cooperators on Web sites such as [www.whosarat.com](#) for the clear purpose of witness intimidation, retaliation and harassment,” a Justice Department official wrote in a December letter to the Judicial Conference of the United States, the administrative and policy-making body of the federal court system.

“The posting of sensitive witness information,” the letter continued, “poses a grave risk of harm to cooperating witnesses and defendants.”

In one case described in the letter, a witness in Philadelphia was moved and the [F.B.I.](#) was asked to investigate after material from whosarat.com was mailed to his neighbors and posted on utility poles and cars in the area.

The federal court in Miami has provisionally adopted the department's recommendation to remove plea agreements from electronic files, and other courts are considering it and experimenting with alternative approaches.

Judge John R. Tunheim, a federal judge in Minneapolis and the chairman of a Judicial Conference committee studying the issue, acknowledged the gravity of the safety threat posed by the Web sites but said it would be better addressed through case-by-case actions.

"We are getting a pretty significant push from the Justice Department to take plea agreements off the electronic file entirely," Judge Tunheim said. "But it is important to have our files accessible. I really do not want to see a situation in which plea agreements are routinely sealed or kept out of the electronic record."

Judge Tunheim said his committee was working on recommendations for a nationwide approach to the issue. He said he favored putting the details of a witness's cooperation into a separate document and sealing only that document, or withholding it from the court file entirely.

For those who want to read the details on cooperating witnesses, whosarat.com charges between \$7.99 for a week and \$89.99 for life. The latter option comes with a free "Stop Snitching" T-shirt.

The site was started by Sean Bucci in 2004, after he was indicted in federal court in Boston on marijuana charges based on information from an informant. The site was initially modest and free, the seeming product of a drug defendant's fit of pique.

Over time, it attracted thousands of postings, many backed by court documents.

Mr. Bucci was convicted in February and will be sentenced next month. Stylianus Sinnis, a lawyer for Mr. Bucci, who is incarcerated, would not say whether Mr. Bucci was still affiliated with the site.

Contacted by e-mail, Mr. Capone called a reporter at an arranged time. He would not provide his phone number but insisted that his name was authentic. He said Mr. Bucci was no longer associated with the site.

The site itself says it is “designed to assist attorneys and criminal defendants with few resources.”

Defense lawyers are, in fact, hungry for any information about the nature of the case against their clients. “The more information out there, the easier it is for the truth to come out at trial,” said David O. Markus, a criminal defense lawyer in Miami.

Lawyers and their investigators can, of course, check court files and gather other material featured on the site themselves. But the site makes it easier, cheaper and quicker to find information about informants who may be involved in several cases in several jurisdictions, the site’s spokesman said.

Eliminating electronic access to plea agreements and related documents would represent a real hardship, Mr. Markus said.

“It doesn’t advance any of the stated safety goals, and it just serves as a roadblock to the public’s constitutional right to access to their court,” Mr. Markus said. “If there is an issue in a particular case, then let’s address it, but to sweep everything under the rug isn’t right.”

The site says that it “does not promote or condone violence or illegal activity against informants or law enforcement officers.”

Frank O. Bowman, a former federal prosecutor who teaches law at the [University of Missouri](#), disputed that. “It’s reprehensible and very dangerous,” Professor Bowman said of the site. “People are going to die as a result of this.”

Defendants who choose to go to trial will, of course, eventually learn the identities of the witnesses who testify against them. But the site also discloses the identities of people engaged in undercover operations and those whose information is merely used to build a case. The widespread dissemination of informants' identities, moreover, may subject them to retribution from friends and associates of the defendant.

Still, Professor Bowman, an authority on federal sentencing law, said he would hate to see the routine sealing of plea agreements. "It certainly is terribly important for the public ultimately to know who's flipped," he said.

Professor Bowman added that he was studying the deals prosecutors made in the aftermath of the collapse of Enron, the energy company. "To do that effectively," he said, "I really need to know who flipped and the nature of their plea agreements."

Judge William J. Zloch, the chief judge of the Federal District Court in Miami, said the move to bar electronic access to plea agreements there was supported by prosecutors and some defense lawyers. "It's available to the public," he said of the documents. "It's just that you have to go the courthouse."

Judge Zloch added that his court would discuss whether to make the change permanent in the coming months.

The existence of the site raises a First Amendment issue for its founder, Mr. Bucci. After his conviction, he filed a motion last month seeking a new trial, saying the government's true purpose in prosecuting him was to shut down the site because "he dared to assert his First Amendment right" to post the information.

In a response filed Thursday, prosecutors conceded that "various levels of government have long expressed concern that the Web site endangers the lives of informants and undercover agents, and compromises investigations." But they denied that the government's dismay about the site influenced their decision to prosecute Mr. Bucci.

Most legal experts agreed that whosarat.com is protected by the First Amendment. In 2004, a federal judge in Alabama refused to block a similar site created by a criminal defendant, Leon Carmichael Sr., who has since been convicted of drug trafficking and money laundering.

“While the Web site certainly imposes discomfort on some individuals,” Judge Myron H. Thompson wrote, “it is not a serious threat sufficient to warrant a prior restraint on Carmichael’s speech or an imposition on his constitutional right to investigate his case.”

But Judge Thompson’s ruling was not categorical. “A few differences in Carmichael’s site could have changed the court’s calculus,” he wrote. And some law professors said that sites like whosarat.com might be subject to prosecution for obstruction of justice or aiding and abetting crimes.

In its December letter, from Michael A. Battle, then the director of the Executive Office for United States Attorneys, the Justice Department urged courts to put a statement on their Internet sites “warning against the republishing or the other use of official court records for illicit purposes such as witness intimidation.” Judge Tunheim said his Judicial Conference committee was awaiting legal advice on that possibility.

For now at least, the Justice Department and the federal judiciary appear to be focused on keeping information from the sites rather than trying to stop the sites from publishing what they learn.

Government secrecy, said Eugene Volokh, a law professor at the [University of California](#), Los Angeles, “ends up being part of the price you pay for having broad speech protection.”