

Sealed Cases in Federal Courts

Federal Judicial Center

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Sealed Cases in Federal Courts

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On April 4, 2008, the Judicial Conference's standing Committee on Rules of Practice and Procedure (Hon. Lee Rosenthal, S.D. Tex., chair) asked the Federal Judicial Center to conduct, for its subcommittee on sealed cases (Hon. Harris Hartz, 10th Cir., chair), a study of completely sealed cases in the federal district courts, bankruptcy courts, and courts of appeals. On July 11, 2008, we described a method for determining *what kinds* of cases are sealed. On November 14, 2008, the subcommittee chair asked us to expand our research to investigate *how* whole cases come to be sealed.

These are the research questions:

1. What kinds of cases are sealed?
2. How is sealing requested?
3. How is sealing decided?
 - a. Who decides?
 - b. Is there an opportunity for public challenge?
4. Is there a record of what is sealed and why?
 - a. Is there a public record?
 - b. Is there a record on the docket sheet?
5. Are cases unsealed when they no longer need to be sealed?

Method

We decided to examine all cases filed in 2006. A calendar-year filing cohort is suitable for this study, because courts incorporate the filing year into case numbers, and a complete calendar-year filing cohort affords accounting for complete sequences of case numbers. The more recent the cases we look at, the more likely information about them will be available electronically; because we began the study early in 2008, selecting cases filed in 2006 avoided cases sealed only for very short periods of time soon after their filing.

Almost all district courts entered records for their 2006 cases in CM/ECF. Some districts did not enter records for some or all magistrate judge or miscellaneous cases; sometimes sealed cases were specially omitted from CM/ECF. But if a case record is entered into CM/ECF, the Center usually has access to its docket sheet information, even if it is sealed.

The subcommittee decided that we should study completely sealed cases, not partially sealed case files. Sealed cases usually are tagged as sealed in CM/ECF, and queries for them in PACER usually result only in messages that the cases are sealed.

We did not count as sealed cases those with every document sealed and only highly redacted docket sheets available on PACER, because a method different from the one we used would be necessary to find all such cases. A very small number of districts make available on PACER

* For assistance with this project, we are grateful to Jared Bataillon, Tyeika Hartsfield, Kevin Jolly, and Angelia Levy. Only the authors had access to sealed information.

highly redacted docket sheets for sealed cases; we followed our usual procedures and regarded such cases as not sealed.¹ It recently became Judicial Conference policy to post redacted docket sheets for sealed cases, but courts generally did not follow this practice for cases filed in 2006.

Using CM/ECF data, we identified every case filed in every district in 2006, and we identified which cases were sealed when we looked at the database. We asked the district clerks if the cases we thought were sealed were in fact all of their sealed cases, and we asked the clerks to account for any case numbers that appeared to be missing in the database. If a district did not put some or all of its 2006 cases in CM/ECF, we asked the clerk to tell us what case numbers were used and which cases were sealed. Clerks very often delegated answering our questions to members of their staffs.

The four basic case types in district courts are civil (“cv”), criminal (“cr”), magistrate judge (“mj”), and miscellaneous (“mc”). Some districts use civil case numbers for cases that other districts would give miscellaneous case numbers; some districts use criminal case numbers for cases that other districts would give magistrate judge case numbers; and there are other variations in how districts assign case numbers. Because an important part of our method was accounting for all case numbers assigned to cases filed in 2006, and because case type is an important part of the case number, we decided to honor districts’ individual case-type classifications. So search warrants, for example, are regarded as magistrate judge cases in districts that give them “mj” case numbers, miscellaneous cases in districts that give them “mc” case numbers, and criminal cases in districts that give them “cr” case numbers.

Many sealed civil cases are *qui tam* actions, almost always filed under the False Claims Act, which requires the case to be sealed until the government decides whether to intervene. Docket entries to which we have access usually make such cases readily apparent. We confirmed with the clerks whether sealed civil cases were in this category, and then we wrote to the presiding judges to inquire (1) if the cases were still pending and awaiting decisions by the government whether to intervene, and (2) if not, why the cases were still sealed.

Using docket information and clerk inquiries, we also were able to classify sealed civil cases into four other categories: grand jury matters, seizures and forfeitures, cases involving minors, and others. For cases in the last category, we wrote to the presiding judges to inquire why, in general terms, the cases were sealed. If we did not hear from a judge within several weeks, we followed up with a telephone call to the judge’s chambers.

Using docket information and clerk inquiries, we classified sealed criminal cases into four categories: cases in which the defendants had not yet appeared, which generally were sealed so as not to tip off the defendants until their apprehension; cases dismissed or transferred before the defendants appeared; juvenile defendants; and other cases. We wrote to judges presiding over cases in the last category to inquire why the cases were sealed, following up with telephone calls to their chambers if necessary. A large majority of these cases had cooperating defendants; the cases are typically sealed either to avoid tipping off other potential defendants or to protect the cooperators’ safety.

We sent inquiries about 182 *qui tam* cases, 184 other civil cases, and 354 criminal cases to 365 judges; 326 responded (89%). (Excluding inquiries about *qui tam* cases only, for which there

1. During the time of this research, most districts identified sealed cases in PACER, to users who knew a sealed case’s docket number, with a message that the case is sealed and no additional information. When we first analyzed the courts’ data, 17% of the 93 courts that used CM/ECF in 2006 presented users instead with a message that the case did not exist or a message that was ambiguous whether the case was sealed or did not exist. Since then, at least four courts have changed the message for sealed cases to say that the cases are sealed.

were not telephone follow-ups, the response rate was 93%.) Only a very small handful of judges explicitly refused to provide us with information about their sealed cases.

Focusing principally on sealed civil cases other than those filed under the False Claims Act, we endeavored to determine how sealing was requested and granted by examining sealed case files, unless docket sheet information already available to us was sufficient for this purpose. We visited some districts to do this. Other districts sent us relevant parts of their sealed files. A few districts did not grant us access to sealed records but agreed to answer questions about the cases.

Because magistrate judge cases and miscellaneous cases are so frequently sealed, rather than examine every one we selected stratified random samples: two sealed magistrate judge cases and five sealed miscellaneous cases in each district. The purpose of examining these samples was to understand what sort of cases among these case types are sealed so that research efforts can be targeted to matters of special interest to the subcommittee if necessary.

We also examined cases of other types, especially if they were entered into CM/ECF or included sealed cases:

- multidistrict and other consolidations: “md,” “ml,” and “mn”
- petty offense cases: “po”
- CVB cases: “tk”
- grand jury cases: “gj” and “~gr”
- material witness cases: “mw”
- habeas corpus cases: “hc”
- prisoner cases: “pc” and “ct”
- transfers of jurisdiction: “tp” and “pt”
- search and seizure warrants: “sw”
- wiretaps: “wi”
- pen registers: “pr”
- foreign judgments: “fj”
- registrations of judgment: “rj”
- out-of-city judge cases: “oc”
- attorney discipline and administrative proceedings: “ap,” “at,” “ad,” and “gp”
- sealed case logs: “sc”
- case shells to facilitate electronic filing: “at,” “tc,” “av,” and “ar”
- cases used for orders related to noncompliance with electronic filing procedures: “nc”

We counted a case as sealed even if the court unsealed it upon our bringing it to the court’s attention² or it became unsealed after we analyzed a court’s data. The research, therefore, reflects cases sealed approximately two years after filing.

Because we did not look at cases not sealed as carefully as cases that are sealed, we have little information about courts’ refusals to seal whole cases. For each category of sealed case, we have little information on how many cases of that category are not sealed. For example, juvenile prosecutions are often sealed to protect the confidentiality of the defendants, which is required by statute. But sealing the whole case is not the only way to do that—sometimes the defendant is merely referred to by initials. We did not collect data on how many juvenile prosecutions are not sealed.

2. If we did not count as sealed cases those unsealed because of our bringing them to the court’s attention, our results would not be representative of filing cohorts of cases we did not bring to the court’s attention.

Sealed Civil Cases

We found 576 sealed civil cases among 245,326 civil cases filed in 2006 (0.2%). There were 23 districts with no sealed 2006 civil cases; 20 of these districts are small, with fewer than six authorized judgeships; four of the districts without sealed civil cases also had no sealed criminal cases. The median percentage of sealed cases among 2006 civil cases was 0.14% for the 94 district courts.³

Nearly a third of the sealed civil cases are qui tam actions. Another third are cases in a few districts that use civil case numbers for cases that most districts would assign magistrate judge or miscellaneous case numbers. We classified the cases according to the predominant reason for their sealing:

- 182 qui tam actions
- 6 temporary restraining orders
- 30 habeas corpus and prisoner actions: six juvenile petitions, 20 actions by cooperators, and four other actions
- 22 other sealed cases involving minors
- 2 actions involving childhood sexual abuse
- 2 actions sealed to protect national secrets
- 1 action filed by an anonymous juror
- 13 actions sealed to protect confidential business information
- 4 actions sealed to protect physicians' reputations
- 7 actions sealed to protect the privacy of medical information
- 6 actions concerning confidential settlement agreements
- 8 actions concerning other confidential agreements
- 1 action sealed to protect a party's credit rating
- 19 other actions sealed because the parties wanted them sealed
- 17 pro se actions
- 1 extradition
- 33 forfeitures and seizures
- 21 grand jury matters
- 151 other cases often given magistrate judge or miscellaneous case numbers instead of civil case numbers
- 30 cases sealed to prevent electronic filing in the wrong case (e.g., federal habeas action, consolidation)
- 4 cases sealed because of filing errors; an alternative would have been to delete the cases
- 16 sealed cases apparently sealed in error

In addition, there are 73 civil cases that are regarded as sealed in their courts, but were not counted as sealed because some information about them is available on PACER. There were 53 civil cases that were sealed when we first looked at the data but became unsealed by the time we analyzed the individual courts' data.

3. If we exclude two districts that put highly redacted docket sheets for sealed cases on PACER, which means the cases are not counted as sealed for purposes of this research, and we exclude one district with a large number of sealed civil cases that most other districts would have given magistrate judge or miscellaneous case numbers, then the mean proportion of civil cases that are sealed is still 0.2% and the median proportion is still 0.14%.

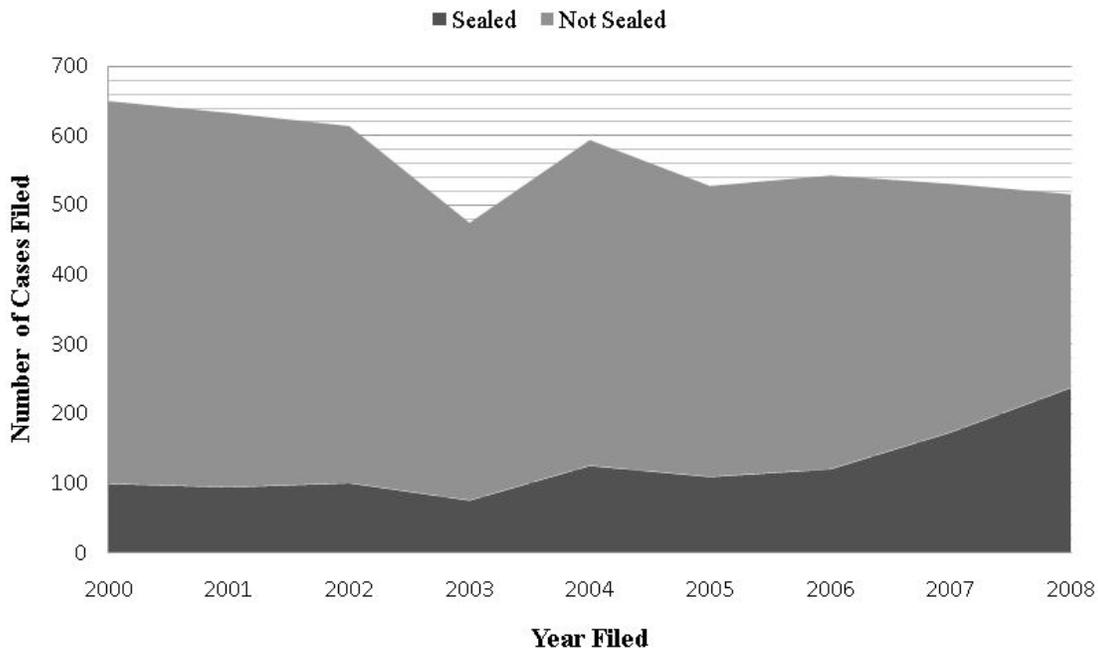
Qui Tam Actions

Under the False Claims Act, a private-party whistleblower may bring an action to recover money paid by the government as a result of fraud. The action is filed under seal, without notifying the defendant, and the government is given 60 days to decide whether to take the lead in the case. 31 U.S.C. § 3730(b) (“Actions by private persons.”). The apparent point of the seal is to protect the confidentiality of the government’s investigation until the investigation is concluded. The government may request an extension of time to decide whether to intervene, during which time the action remains sealed. *Id.* § 3730(b)(3); see Carrie Johnson, *A Backlog of Cases Alleging Fraud*, Wash. Post, July 2, 2009, at A1.

False claims actions that are not sealed are more readily identifiable than are cases of other types. Usually, the civil cover sheet identifies the cause as arising under either 31 U.S.C. § 3729 (defining a false claim) or 31 U.S.C. § 3730 (providing for civil actions against false claims). A search of cases entered into CM/ECF and filed in calendar years 2000 through 2008 shows a downward trend in the number of such filings over this time span (see Figure 1). More importantly, the data show that nearly half of the cases filed in 2008 are sealed as of late October 2009, but approximately 15% of cases filed early in the decade are still sealed late in 2009 (see Figure 2).⁴ Of the false claims actions filed in 2000 through 2003 that are still sealed, 82% are marked in CM/ECF as closed.⁵

There are 182 sealed qui tam actions: 181 filed under the False Claims Act and one filed under the Miller Act.

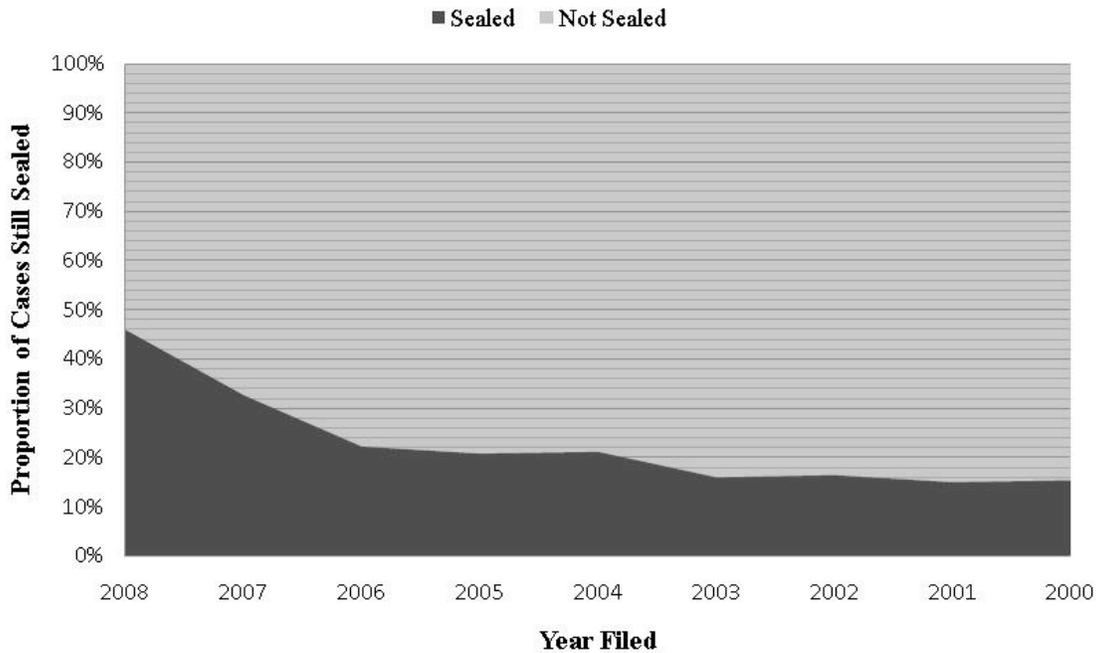
Figure 1. False Claims Act Filings



4. These computations were made on October 28, 2009.

5. Note that tabulations from codes in CM/ECF do not afford the same level of precision as the general method for this research project that also includes direct communication with clerks and judges about the cases.

Figure 2. False Claims Actions Still Sealed



Sealed Pending Government’s Decision Whether to Intervene

There are 95 sealed qui tam actions in which the government had not yet decided whether to intervene.

Unsealed Following Government’s Making Its Election

There are 22 qui tam actions that were sealed awaiting the government’s decision whether to intervene and unsealed after the government made its election: 19 appear to have been unsealed in the normal course of events, and three appear to have been unsealed as a result of our bringing them to the courts’ attention.

Unsealed Without a Filing of the Government’s Election Notice

Two qui tam actions were sealed pending the government’s decision whether to intervene, but although it does not appear that the government filed a notice of election, the judges unsealed them.

Sealed Pending Settlement

Two qui tam actions, unrelated and filed in different districts, remained sealed while the parties were negotiating settlements.

Stayed

Three sealed qui tam actions were stayed.

Transferred

Nine sealed qui tam actions were transferred to other districts. Transferring districts often do not receive information on the case number assigned to the case by the transferee district, and there does not appear to be a procedure for unsealing the original filing if the case is unsealed in the transferee district.

Dismissed

There are 48 sealed qui tam actions that were dismissed: 30 remained sealed, seven apparently were unsealed in the normal course of events, and 12 apparently were unsealed as a result of our bringing them to the courts' attention.

Filed Under the Miller Act

One case was styled a qui tam action filed under the Miller Act, which protects government contractors' creditors. The action was filed under seal, but there does not appear to be any judicial authorization to file it under seal. Nor does the Miller Act appear to authorize either qui tam actions or actions under seal.

Temporary Restraining Orders

Six sealed civil cases involve temporary restraining orders. Such a case would be sealed temporarily at filing so as to not tip off the party the filer intends to restrain. In each case, a motion to seal the case was filed with the complaint, and it appears that each case was sealed with judicial permission.

In one case, the judge denied the restraining order. Another was voluntarily dismissed, according to the judge, "before it became appropriate to give notice to the adverse party." Two cases were resolved by settlement. One trademark infringement action, according to the judge, "was closed before the sealing order needed to be lifted." The other case settled after the restraining order was granted; according to the judge, the plaintiffs sought sealing because "the complaint contained defamatory statements of a scandalous nature and these statements endangered their reputation and goodwill." Another case was an action removed from state court with a temporary restraining order and remanded back one week later; according to the judge, "This case was sealed based on the findings in state court that it should be sealed prior to being removed to Federal Court." The sixth case was a trademark counterfeiting action unsealed upon our bringing it to the court's attention. The case was sealed pursuant to 15 U.S.C. § 1116(d), which provides,

An order under this subsection, together with the supporting documents, shall be sealed until the person against whom the order is directed has an opportunity to contest such order, except that any person against whom such order is issued shall have access to such order and supporting documents after the seizure has been carried out.

Id. § 1116(d)(8). According to the judge, the case should have been unsealed at the expiration of the temporary restraining order.

Habeas Corpus Actions and Prisoner Petitions

There are 30 sealed civil cases that are either habeas corpus actions or other types of prisoner petitions. Of these, six concern juvenile prosecutions.

There are 20 habeas and prisoner actions that appear to concern cooperators. After we brought the cooperation cases to the courts' attention, it was determined that two of them should not be sealed. One was unsealed upon our bringing it to the court's attention. It was a federal habeas corpus case, and at the time it was filed the related criminal case was sealed. When the criminal case was unsealed, the civil case inadvertently remained sealed. The other case that was erroneously sealed was a prisoner petition dismissed for failure to prosecute. It was related to a criminal case in which filings related to a sentencing downward departure for cooperation were sealed, but the criminal case was not wholly sealed. The court acknowledges that the prisoner's petition should not have been sealed just because the criminal judgment was sealed.

There are four other sealed habeas corpus actions. One was a habeas corpus action brought by a detained defendant in a state criminal prosecution for a sex crime. The defendant ultimately was

acquitted by the state court, and the state court record was expunged. The federal judge agreed to seal the record of the habeas action to keep effective the state court's sealing of the prosecution. The other three actions were sealed to protect the privacy of victims of sex offenses.

Other Cases Concerning Minors

There are 22 other civil cases sealed because they concern minors. In about half of the cases, the plaintiff was a minor. In one, the minor was a victim: the case was a civil action by the government seeking a protective order against a criminal defendant indicted for child pornography preventing contact between the criminal defendant and the child victim. In two cases, the minor was a defendant in an action by a school district concerning the special education of the minor. The minor in one of these cases was actually over 18 years of age, and was the plaintiff in a related sealed case.

Two cases were international child custody cases, three related actions concerned insurance liability for sexual abuse by a coach of minor athletes, and one action arose under the Indian Child Welfare Act.

All appear to have been sealed with judicial permission. In about half of these cases, a motion to seal the case was filed with the complaint. In most of the others, such a motion was filed anywhere from a few days after the complaint was filed until the time of settlement. In one case, a motion to seal the case was made and granted before the complaint was filed. In another case, which was a removed action concerning child social services, the judge sealed the case without a motion to seal's appearing on the docket. One case was sealed as a condition of settlement.

One case was resolved by an unpublished opinion available on Westlaw in which the plaintiff was identified by initials. There are public appeals related to two cases.

Cases Concerning Childhood Sexual Abuse

Two civil cases are sealed because, although the litigants are now adults, the allegations involve childhood sexual abuse. In one case, the motion to seal was filed with the complaint; in the other case, it was the defendant who moved to seal the case—several months after the complaint was filed.

Actions Involving National Secrets

Two sealed cases are related settled intellectual property actions that concern nuclear weapons. A motion to seal the first case was filed with the complaint and granted the same day. The second case was filed approximately one month later and apparently sealed in reliance on the order sealing the first case.

Case Sealed to Protect Juror's Anonymity

One civil case was brought by an anonymous juror against the juror's employer, who was going to fire the juror because of prolonged jury service. The case was sealed to protect the identity of the juror. The case was sealed by the judge the day it was filed, on an ex parte application.

Cases Involving Confidential Business Information

There are 13 civil cases sealed because they involve confidential business information, including trade secrets. The defendant in one of these cases was granted summary judgment on a finding that what the defendant took were not trade secrets, but the case remained sealed because no one asked the court to unseal it.

Motions to seal the cases were filed when the cases were filed for about half of the cases. For several others, the cases were on the public record for a time. It appears to be the case that most or all of these cases would not have had to be sealed if the pleadings had been suitably redacted.

Cases Sealed to Protect Physicians' Reputations

Four actions were sealed to protect physicians' reputations:

- A removed personal injury action concerned whether a physician's testimony in a medical malpractice lawsuit violated professional ethics; the parties filed a stipulated order sealing the file, which contains an order by the state court sealing the original case.
- Action voluntarily dismissed; sealed on joint oral motion at a hearing. According to the judge, the case

was a lawsuit brought by a doctor against the hospital where he held medical privileges. He had been summoned to a meeting at the hospital and told that he might be involved in "detrimental medical practices." He brought an injunctive action seeking to obtain more information about the claims against him prior to the meeting. On the date the lawsuit was filed . . . , I granted the doctor's request for a temporary restraining order and restrained the hospital from conducting a hearing of charges against the doctor without giving him prior notice of the charges. . . . On the day of [a] preliminary injunction hearing, the parties reached a settlement agreement. As I recall, as part of their agreement, the parties requested that the case be sealed in light of the unsubstantiated allegations against [the doctor].

- The case was sealed at the parties' request pending discovery to protect the defendants' reputations; according to the judge, the defendants are doctors, and doctors are particularly concerned about their reputations. The lawyers asked the court to keep the case sealed. Because the case had not yet proceeded to discovery, the judge agreed to keep it sealed. Although the judge is generally opposed to sealing cases, he saw no reason for these mere allegations to be public.
- The plaintiff claimed that the defendant physician came into possession of copyrighted board certification examination materials and used them to prepare other physicians for the examination. The parties settled their dispute before the complaint was filed; the complaint was filed so that the parties would be bound by a consent decree, and it was filed with a consent motion for filing documents under seal in order to protect the defendant's reputation. Three days later, the judge issued a consent decree and ordered the case sealed.

Cases Concerning Medical Information

Seven civil cases are sealed because they concern sensitive medical information:

- Action under the Americans with Disability Act. According to the judge, the case was sealed to protect sensitive personal medical information.
- Civil rights action dismissed without prejudice; a motion to seal the case was filed with the complaint and granted 10 days later. According to the district judge, the case was sealed by a magistrate judge at the plaintiff's request because some documents contained sensitive information about the plaintiff's health.
- Dismissed as settled; order sealing the case filed two days after dismissal. According to the judge, the case was sealed by mutual request because it was a dispute between a doctor and a patient who had AIDS.

Sealed Cases in Federal Courts

- ERISA action against two insurance companies; the plaintiff filed a motion to seal the case more than a month after she filed the case; the judge granted the motion the next day. According to the judge, the case was sealed because it concerned whether a medical condition would qualify for total disability under an insurance policy and the parties did not want the nature of the condition known publicly.
- Social security disability action remanded by stipulation; a motion to seal was filed by the plaintiff with the complaint and granted by the judge a month later. According to the judge, the court sealed the case at the plaintiff's request, because of the plaintiff's HIV status.
- Two petitions to determine prisoners' mental condition; the government filed with each petition a motion to seal exhibits; the judge sealed the whole case the next day. According to the judge, each case "was a proceeding to determine the mental condition of a federal prison inmate in which extensive mental health records pertaining to the defendant became a part of the court's file. I traditionally seal proceedings of that kind."

Cases Concerning Confidential Settlement Agreements

Six sealed civil cases concern confidential settlement agreements; two of these were unsealed upon our bringing them to the courts' attention.

Still Sealed

- Action dismissed by stipulation; case sealed by the clerk's office, apparently at the defendant's request, one day before the defendant answered and moved for summary judgment; a stipulated motion to seal was filed nearly three weeks later and granted nearly a week after that; summary judgment granted. According to the judge, this is one of those rare civil cases that legitimately should be completely sealed; it was a suit to enforce a confidential settlement agreement for a large amount.
- Case terminated by sealed order. According to the judge, this was an action to enforce a confidential settlement agreement between two companies; the parties resolved their dispute. The cover letter accompanying the complaint asked the clerk to file the complaint under seal; there is no record of judicial action on the request. The plaintiffs filed a notice of dismissal without prejudice, and the judge dismissed the action the next day.
- Removed action dismissed by stipulation; on the day of removal, the defendant removing the action filed a motion to seal the case, which the judge granted two days later. According to the judge, the case "remains sealed because it was a post settlement dispute involving a confidential settlement."
- Settled fraud action for breach of attorney fees. According to the judge, the action was filed under seal by the plaintiff; it was an action to enforce a sealed settlement agreement filed in another district pertaining to multidistrict litigation. The docket sheet does not show a motion or an order to seal, but it does note, on the day after the complaint was filed, "There was no Motion To Seal Case submitted by counsel." The complaint alleges that the plaintiff's attorney in a wrongful death action defrauded the plaintiff by taking excessive fees. On notification of the parties' settlement, the court dismissed the action. The record shows no motion or order to seal the case.

Unsealed Upon Our Bringing the Case to the Court's Attention

- Action between two insurance companies related to a sealed settlement agreement concerning insurance coverage and a lawsuit in another state over a fatal vehicle ac-

cident resulting in a multi-million-dollar jury verdict. The docket sheet shows a motion to seal the case filed with the complaint and an order granting the motion filed a couple weeks later. According to the judge, the plaintiff insurance company “filed a motion to seal the complaint under seal because of the confidentiality clause in the settlement.” The case settled. Upon our bringing the case to the judge’s attention, he unsealed it:

The parties submitted the attached agreed order of dismissal. As you can see it contained a provision ordering that the case remain sealed. Early in the litigation I told the parties I did not feel the case should remain sealed. I also attach a copy of the order of dismissal the Court entered. I did not include a directive that the case remain sealed. I did not realize until your letter that this case was still sealed. I have instructed the clerk to unseal the case.

- Settled action concerning a confidential distribution agreement and a confidential settlement agreement; the magistrate judge granted the plaintiff’s motion to seal the case, which was filed with the complaint, to protect the confidential terms of the agreements.

Cases Concerning Other Confidential Agreements

Eight civil cases are sealed because they concern other confidential agreements:

- According to the judge, the case “involved a Confidentiality Agreement governing an Arbitration proceeding. The parties stipulated that the agreement be sealed.” The plaintiffs filed a motion to seal its petition to vacate an arbitration award, and the defendants filed a statement that they did not oppose the motion. The judge granted the motion three weeks later, and on that day the plaintiff filed its petition. The case settled a month after filing.
- Action dismissed by stipulation. Docket entries show the filing with the complaint of an ex parte application for an order allowing the filing of the complaint under seal, and the filing of an answer, but no judicial action on the application to seal. According to the judge,

Plaintiff filed an ex parte application at the time it initiated the action, seeking leave to file the complaint under seal “on at least a temporary basis,” because the complaint made reference to quoted and attached license and distribution agreements between the parties that had confidentiality provisions in them. Plaintiff indicated that it believed the parties understood that the agreements could be filed in court to enforce their provisions, but it wanted to afford the defendant an opportunity to challenge that assumption or show cause why the pleading should remain sealed. Since plaintiff did not know the identity of defendant’s attorney, it sought an order sealing the complaint. The case was closed via a stipulation for dismissal within a matter of months. No litigation activity took place in the interim, and thus it appears that the court never had an opportunity to consider whether to unseal the complaint.

- Petition to confirm an arbitration award stayed because of a bankruptcy filing. The motion to seal cites a stipulated protective order concerning “commercially sensitive information.” The chief judge’s order sealing the case notes that sealing an entire case is disfavored and the presiding judge may revisit the matter.
- Securities class action complaint alleging accounting fraud filed under seal because of a confidentiality agreement, but counsel initially said there would be a motion to unseal. There is no record of permission to file the complaint under seal or to seal the

case. The action was dismissed for failure to sufficiently allege scienter; the dismissal is the subject of a sealed appeal.

- Summary judgment for plaintiff in a declaratory insurance coverage action; a magistrate judge denied a motion to seal the case filed with the complaint, but later the magistrate judge granted a stipulation to seal the case pending resolution of an underlying state case.
- The complaint to complete a transaction as agreed apparently was filed under seal; apparently the agreement at the heart of the case was confidential; with the complaint, the plaintiff filed a motion to file the action under seal to protect sensitive and proprietary and competitive information and a form order, which does not appear to have been signed by the judge. The judge issued a preliminary injunction and deferred consideration of “what documents, if any, will be filed under seal.” The action was dismissed by stipulation two weeks later.
- Two pro se actions, by a law school graduate, concerning arbitration. According to the judge, the case was sealed because the plaintiff was under contract not to disclose confidential information contained in the petition. The plaintiff alleged that his termination wrongfully failed to accommodate his sleep disorder causing him to perform poorly early in the day. In one action, he filed a “motion and declaration seeking protective order sealing portions of the record” with the complaint, but this was docketed as a motion and declaration to seal the case. The judge granted the motion to seal portions of the record. In the other action, the motion to seal portions of the record was actually denied as moot, because the plaintiff had already withdrawn the action.

Case Sealed to Protect a Credit Rating

One civil case was sealed to protect the defendant’s credit rating. To facilitate resolution of a plaintiff’s attempt to collect on a judgment in an action not sealed, the court suggested the plaintiff file an action under seal that would only be pursued if the plaintiff failed to collect. It was not necessary for the plaintiff to pursue the sealed action.

Other Cases Sealed Because the Parties Wanted Them Sealed

There are an additional 19 civil cases that are sealed because the parties wanted them sealed for various reasons:

- Action alleging rape by former high-profile university athletes voluntarily dismissed with prejudice. According to the judge, the case was filed early in the days of CM/ECF by an attorney who filed it under seal from the start, and the case settled before court involvement.
- Action dismissed by stipulation. According to the judge,

The case was initiated by an individual against a movie rental company alleging a violation of the Video Privacy Protection Act, 18 U.S.C. § 2710 et seq., and seeking monetary damages. The case was settled privately among the parties and as a condition of that settlement the parties filed a joint agreed motion to seal the record. I considered the joint motion and the proposed order and determined that it was appropriate under the circumstances to seal the records. Only a single individual’s rights and interests were at stake and at interest. No general public issue was involved. Those private rights were vindicated. Accordingly, I entered an appropriate order.

Sealed Cases in Federal Courts

- Action for declaratory judgment related to an insurance contract; the judge ordered it sealed at filing. According to the court, the parties did not want to jeopardize the underlying case, and they wanted to protect the firm involved and avoid adverse publicity for the insurer.
- Action, ultimately dismissed by stipulation, by a terminated senior employee to recover disability severance benefits where the disability allegedly arose from the employee's discovering numerous financial improprieties by the employer. The complaint was apparently filed under seal. The file does not appear to include any permission to file anything under seal.
- Breach of employment contract case dismissed by stipulation; upon our bringing the case to the judge's attention, he asked the attorneys if he could unseal it, but they objected; the record includes information about the plaintiff's accessing pornographic sites. The defendant filed its answer nearly three months after the complaint was filed; over two months later, the plaintiff filed a motion to seal the answer; five days later, the plaintiff amended his motion to seal the whole case, and the judge granted the motion. The motion to seal states that the record contains "confidential communications between the Plaintiff and his former employer that, if made accessible to the public, would constitute an invasion of the Plaintiff's privacy and could result in harm to Plaintiff."
- Case resolved by stipulated judgment. According to the judge, "The file you describe has a stipulation of the parties calling for dismissal with the file being sealed. Another judge signed the judgment providing for dismissal and sealing, and for unknown reasons my signature was added two months after I became a judge."
- Employment action dismissed and ordered sealed. According to the judge, the plaintiff's attorney withdrew from this age discrimination action when the plaintiff moved away and could not be located. The plaintiff subsequently asked the court to dismiss and seal the action, because she believed the public record was making it difficult for her to obtain employment.
- Employment action dismissed as settled and permanently sealed. The complaint alleges a pattern of unwanted sexual advances. On stipulated dismissal, the judge issued an order permanently sealing the record "upon the request and stipulation of the parties, and for good cause shown." According to the judge, the pleadings and settlement agreement included explicit and personal material, so the parties requested the matter sealed.
- Five related stockholder suits dismissed on stipulation and a joint motion to seal the cases, which the court granted; apparently, the motion to seal does not provide reasons for sealing the case beyond the parties' agreement to do so.
- Fraud action. The complaint was filed under seal pursuant to an order granting to a plaintiff in another case the right to file under seal a response to the defendant's motion to dismiss and for summary judgment.
- Removed action dismissed and sealed on stipulated motion; the case included charges of alienation of affection and adult incest.
- Settled case concerning Medicaid reimbursement; a motion to seal the file was filed with the settlement motion, and both were granted the following week. According to the judge, the case "was sealed because a joint settlement agreement among all parties with the amount of settlement listed was sought to be sealed by all parties."
- Trademark action resolved by stipulated permanent injunction; the judge ordered the case sealed and issued a temporary restraining order on the day the case was filed.

Sealed Cases in Federal Courts

According to the judge, the parties asked that the entire case be sealed because of the confidential nature of the settlement.

- Two related cases sealed by the judge more than five months into the case, on a stipulated request made at a scheduling conference. According to the judge, these are commercial cases concerning a multi-million-dollar debt:

All parties agreed that to avoid prejudice to the defendants, who were attempting to sell the business intact, and as a going concern, that it was in the parties' best interests that the proceedings in the cases be conducted under seal to avoid prejudice.

The cases have now been finally resolved and are closed.

Pro Se Cases

There are 17 sealed pro se civil actions, one of which was unsealed upon our bringing it to the court's attention. Six sealed pro se cases were regarded by the courts as qui tam actions. One case was a prisoner petition sealed because the court regarded it as a qui tam action, but the court transferred the case to another district, which regarded it as a civil rights action and did not seal it.

Sometimes a court completely seals a pro se action that is dismissed without very much judicial action if the pro se filer has failed to properly file sensitive information separately under seal.

Extradition

One extradition complaint was sealed so as to not tip off the extraditee, and it was dismissed by the government before the defendant appeared.

Forfeitures and Seizures

There are 33 sealed forfeiture and seizure actions. These include cases described as forfeitures, drug-related seizures, intellectual property seizures, and garnishments. Such cases are generally sealed temporarily so as not to tip off holders of the property at issue, but it is not clear why the cases remain sealed.

Grand Jury Matters

There are 21 civil cases that are sealed because they concern grand jury matters. In other districts, some or all of these cases might have been given different case types.

Other Sealed Civil Cases Often Given Other Case Types

There are an additional 151 sealed civil cases that in other districts might have been given other case types: 12 concern letters rogatory and other matters related to foreign cases, and one of these appears to have been unsealed upon our bringing it to the judge's attention; two were motions concerning subpoenas, and one of these was a motion to quash a subpoena redesignated a sealed miscellaneous case; 91 are warrant-type applications; and 46 are attorney discipline cases.

Cases Sealed to Prevent Filing in the Wrong Case

There are 30 civil cases that were sealed to prevent the filing of documents that should be filed in other cases. One was a federal habeas corpus action sealed so that filing would be in the related criminal case. Upon our bringing the case to the court's attention, the court unsealed it and found a better way to prevent filing in federal habeas corpus actions. The other 29 cases are parts of

consolidations, sealed so that filing would only be in the lead case, and 28 of these are in a single district.

Cases Sealed Because of Filing Errors

There are four civil cases sealed because of filing errors: three were opened electronically, but no complaint was filed, and one was opened initially with the wrong office code.

Cases Apparently Sealed in Error

There are 16 civil cases that apparently were sealed in error. Although other cases may have been unsealed upon our bringing them to the courts' attention, and some may question whether other cases should be sealed, that these cases were sealed in error is especially clear.

- According to the judge,

This is a motion to quash subpoena for financial records for an imminent court martial proceeding. Although assigned to me, this case was referred to [a magistrate judge]. It was sealed by the clerk when it was filed. No one knows why the file was sealed, except in retrospect it involves financial records. It might have been that the clerk mistakenly thought it involved a grand jury matter. The case was only open for a couple of weeks.
- Action voluntarily dismissed. The case was unsealed upon our bringing it to the attention of the judge, who said that it “was sealed only because of the docket clerk’s error caused by counsel.”
- Antitrust action transferred to another district as a tag-along part of multidistrict consolidation. According to the judge, “I did not know that this case is under seal, and the file is not so marked. . . . I will make sure that the docket reflects that this case is no longer under seal.” The case was unsealed.
- Complaint concerning benefits related to a labor union voluntarily dismissed. According to the clerk’s office, this case was sealed in error and unsealed when we brought it to the court’s attention.
- Complaint for declaratory relief; the case was ordered sealed by a magistrate judge on the day it settled. The district judge asked the parties to permit the unsealing of the case, and a magistrate judge determined that the case could be unsealed.
- Disbarment proceeding. According to the judge, this case was sealed in error and has been unsealed. Docket information on PACER includes very little more than the attorney’s name.
- Multidistrict consolidation transfer from another district, where the case is sealed. According to the judge, this is a tag-along consolidation case. “Plaintiffs filed it sealed. Through administrative error, it was sealed without court permission and not closed or unsealed when it was consolidated. This error has been cured.”
- Prisoner complaint dismissed; unsuccessful appeal. According to the judge, the sealing of this case appears to have been an error by the clerk’s office, and the case is now unsealed at the judge’s direction.
- Prisoner petition; request to proceed in forma pauperis denied. According to the judge, there is no sealing order on file in the case. But the docket sheet she enclosed with her response shows the case was sealed the day it was opened. The case is now unsealed.
- Removed action transferred to another district. According to the transferee judge, the action involves a fee dispute between two law firms with respect to an underlying state court case. The parties asked that an exhibit to the complaint be sealed, and the

Sealed Cases in Federal Courts

district judge sealed the whole case. The transferee district kept the case sealed because that is how it arrived. The case is provisionally settled with the final settlement's depending upon fees incurred in resolving the pending underlying suit.

- Section 1983 action transferred to another division. A motion to seal the complaint was filed one week after the complaint was filed, and the judge granted the motion two days later. One week after that, the judge granted a motion to file a redacted complaint. From docket entries, it appears that the judge granted a motion to transfer the case, but denied a motion to seal the whole case.
- Securities class action on behalf of purchasers of the defendant's securities; transferred from another district, where the case is not sealed. According to the judge, the order to seal the case was apparently issued before he received the case, probably because the case concerned patient records. The clerk's office cannot figure out how the case came to be sealed.
- Settled ERISA action. According to the judge, the case was sealed because sensitive medical information would be relevant to a summary judgment motion, but the case settled before such a motion was filed, so the case does not need to be kept sealed now. The case is still sealed.
- Social Security complaint; the court granted the defendant's motion for a remand and granted the plaintiff's motion for attorney fees. The judge subsequently retired. The case was unsealed subsequent to our asking about it; the docket does not show a reason for unsealing, so our asking about the case may have resulted in its unsealing.
- Unsuccessful appeal of a bankruptcy decision denying the tolling of limitation on an action alleging childhood sexual abuse; affirmed on appeal by unpublished public opinion without oral argument. According to the judge, the case came to the judge sealed, and he does not know why it was sealed, but he assumes it was sealed because it was based on allegations of sexual molestation of the claimant while he was a child. "In the two weeks I had the case, no party asked me to reexamine sealing, and I never made a decision on that question." The case file includes a letter stating that

two orders were issued in this bankruptcy indicating that the true names and addresses of the confidential claimants were to be kept under seal, unless the claimants indicated they did not wish their identifies kept confidential. See attached copies of the bankruptcy court orders. Your court will need to determine whether to keep additional documents under seal and to what extent.

- Unsuccessful bankruptcy appeal. According to the clerk, this case should not be sealed. The clerk's office cannot figure out how or why the case was sealed, and all evidence suggests that it could not have been sealed until after the case was closed.

Cases Not Counted as Sealed But Regarded by the Courts as Sealed

There are 73 civil cases, in three districts, that are regarded as sealed in their courts, but were not counted as sealed because some information about them is available on PACER.

Cases That Became Unsealed After We First Looked at the Data

There were 53 civil cases that were sealed when we first looked at the data but became unsealed by the time we analyzed the individual courts' data. This is just an indication of the extent to which the data were in flux during this study.

Sealed Criminal Cases

We found 1,077 sealed criminal cases among 66,458 criminal cases filed in 2006 (1.6%). Among the sealed cases are 241 grand jury matters and warrant-type applications, which most districts would have given magistrate judge or miscellaneous case numbers instead of criminal case numbers. There were 13 districts with no sealed 2006 criminal cases; 10 of these districts are small, with fewer than six authorized judgeships; four of the districts without sealed civil cases also had no sealed criminal cases. The median percentage of sealed cases among 2006 criminal cases was 0.96% for the 94 district courts.⁶

The three principal reasons for sealing a criminal case, accounting for 65% of the sealed criminal cases in this research, are (1) sealing the indictment so as to not tip off the defendant until the defendant's apprehension, (2) protecting the identity of a juvenile defendant, and (3) keeping secret details of a cooperating defendant's prosecution. Another 21% of the sealed criminal cases we observed are warrant-type cases that many districts would have given magistrate judge or miscellaneous case numbers instead of criminal case numbers. We classified the cases according to the predominant reason for their sealing:

- 284 sealed indictments
- 180 juvenile prosecutions
- 70 misdemeanor drug cases, which often are expunged
- 241 criminal cases sealed because of cooperation or ongoing investigations
- 17 sealed transfers of jurisdiction
- 15 grand jury matters
- 226 warrant-type cases
- 4 criminal cases sealed to protect the victims
- 2 criminal cases sealed to protect trade secrets
- 1 criminal case sealed to protect a high-profile defendant
- 1 sealed criminal contempt case related to attorney discipline
- 1 other sealed criminal case
- 12 criminal cases in which the sealing function was used for cases that are not really sealed
- 23 cases apparently sealed in error

In addition, there are 20 criminal cases that are regarded as sealed in their courts, but were not counted as sealed because some information about them is available on PACER. There were 102 criminal cases that were sealed when we first looked at the data but became unsealed by the time we analyzed the individual courts' data.

Sealed Indictments

There are 284 sealed indictments filed in 2006 that remained sealed when we analyzed the data.

An indictment is sometimes filed under seal and kept sealed until the defendant appears. The indictment is kept sealed so as to not tip off the defendant. In some districts, indictments are initially sealed as a matter of course. Once the defendant has appeared, the indictment can be unsealed. If the defendant cooperates with the government's prosecution of others, who may be defendants in the same case or defendants in cases with other case numbers, then the case may re-

6. If we exclude three districts that put highly redacted docket sheets for sealed cases on PACER, which means the cases are not counted as sealed for purposes of this research, and we exclude one district with a large number of sealed criminal cases that most other districts would have given magistrate judge or miscellaneous case numbers, then the mean proportion of criminal cases that are sealed is 1.4% and the median proportion is 0.97%.

main sealed because of cooperation. Sometimes an indictment remains sealed after the defendant appears because no one thought to unseal it.

In a multi-defendant case, it is possible to seal the prosecution against one defendant while the prosecution against another defendant is not sealed. For this project, only cases sealed as to all defendants were counted as sealed cases. In a few of these, the court kept the case sealed until all defendants appeared, which presumably would require either the explicit or implicit consent of those defendants who did appear.

Sometimes the government asks the court to dismiss a sealed indictment against a defendant who has not yet appeared. Perhaps the government has decided not to prosecute the defendant after all, or the government has decided to prosecute the defendant with a different indictment or in a different jurisdiction. In a few cases, the sealed indictment was transferred. It is not clear whether such indictments should remain sealed permanently.

Fugitives

There are 232 indictments that remained sealed because the defendants had not yet appeared. Of these, 15 became unsealed after we analyzed the data because the defendants appeared.

Still Sealed Because Some Defendants Are Fugitives

There were six sealed multi-defendant indictments that remained sealed after the appearance of one or more defendants because not all of the defendants had appeared. One case became unsealed as part of the clerk's office's periodic review of sealed cases. Another case was unsealed upon our bringing it to the judge's attention. The judge presiding over another case noted that the case should have been unsealed.

Transferred Before the Defendants Appeared

There were three sealed indictments transferred to another district or another division of the same district before the defendants appeared.

Dismissed Before the Defendants Appeared

There were 43 sealed indictments dismissed before the defendants appeared.

Juvenile Prosecutions

There were 180 sealed juvenile prosecutions.

According to the federal juvenile delinquency statute, "Unless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding." 18 U.S.C. § 5038(e). In addition, "Throughout and upon the completion of the juvenile delinquency proceeding, the records shall be safeguarded from disclosure to unauthorized persons." *Id.* § 5038(a).

Juvenile prosecutions are not always completely sealed. Sometimes initials or a Doe name is used to refer to the defendant in public records, and records are only sealed or redacted to the extent necessary to protect the defendant's identity. Because we did not study cases not sealed, we do not know how often juvenile defendants are protected by methods other than complete sealing, and we do not know how consistent individual districts are in the methods they employ. Juvenile prosecutions are most frequent in districts with substantial federal or Indian land.

Misdemeanor Drug Cases

There were 70 cases sealed or expunged because the defendants were young-adult first-time drug-possession offenders.

A first-time offender guilty of simple drug possession may be sentenced to probation, and if the offender was under 21 at the time of the crime, the record of the prosecution can be expunged. 18 U.S.C. § 3607. One way to expunge a record is to seal it. Another way to expunge a record is to delete it.

There may be expunged young-adult drug possession cases not accounted for in this research, or counted as skipped case numbers. On one occasion, a member of a clerk's staff told us that one of the criminal cases in that district was expunged. When we asked for additional information, a different staff member told us that the first should have denied the existence of the case.

Cooperators

There are 241 sealed prosecutions against cooperators.

These generally are the most sensitive sealed criminal cases in this research. The prosecution of a cooperator may be sealed either for the benefit of the government, such as to protect the confidentiality of an ongoing investigation, or for the benefit of the defendant, such as to protect the defendant or the defendant's family members from physical harm. The former reason is likely to require only temporary sealing, but the latter reason may require either temporary or permanent sealing, depending on the circumstances. At least 18 of the sealed prosecutions of cooperators became unsealed after we analyzed them. We did not research with precision the specific reasons for sealing each cooperator's prosecution, because such information is regarded as very sensitive.

Transfers of Jurisdiction

There were 17 sealed transfers of jurisdiction for probation or supervised release. Typically, the case is sealed by the transferring district for reasons that the transferee district does not know, but the transferee district keeps the case sealed because that is how the case arrived. Investigation of some of these cases showed that the transferring district did not seal the whole case, but did seal one or more documents related to supervised release.

Grand Jury Matters

There were 15 grand jury matters, all in the same district.

Warrant-Type Cases

There were 226 warrant-type cases: search warrants (10) and applications for wiretaps (19), surveillance devices (12), pen registers and trap and traces (151), telecommunication records (9), tax records (23), and other sources of information (2). Three districts had such cases, but only one district had cases of this type other than search warrants.

Sealed to Protect the Victims

There were four criminal cases sealed to protect the victims. Most of these protected victims are minor victims of sex crimes, but one case appears to involve an adult victim of illegal wiretapping.

- Indictment against two defendants for enticing teenage girls. Filed with the indictment was a motion to “permanently seal the indictment in the above-styled cause inasmuch as minor victims are involved.” One defendant was sentenced to over seven years; the other defendant was sentenced to nine years. According to the judge, “the case was sealed because it involved the coercion or enticement of minor females. The case was sealed in order to avoid disclosure of the identity of the victims of this alleged conduct.”

Sealed Cases in Federal Courts

- Sealed indictment for child pornography concerning alleged sexual molestation and erotic photography of a five-year-old girl left in the defendant's care; the case was unsealed upon the defendant's appearance. The defendant moved to seal pretrial motions, and the government supported the motion, which the judge granted. An unpublished opinion available on Westlaw resolved a preliminary issue. The defendant was sentenced to 20 years in prison on a plea agreement, and his appeal is sealed. In response to the defendant's motion to seal the file and transcripts of district court hearings, the court sealed the case. According to the judge, the case was sealed to protect the identity of the child. The court of appeals issued a published opinion.
- Sealed indictment for interception of electronic communications; indictment filed under seal and unsealed upon the defendant's arrest; the government filed an amended motion to keep the case sealed; sentence of three years probation on a plea agreement. According to the judge's chambers, the case remains sealed even after sentencing to protect the victim.
- Sexual abuse indictment; sentence of over 15 years on a plea agreement; case sealed at sentencing. According to the judge, this is "a criminal case involving a juvenile victim and a change of plea proceeding." The sentencing minute entry states, "IT IS ORDERED that the proceedings in the case be sealed, given the nature of the offense and the circumstances about that."

Sealed to Protect Trade Secrets

There were two criminal cases sealed to protect trade secrets:

- Communication information; a motion to seal the case was filed and granted the day after the information was filed. According to the judge, the case "is sealed because a company's trade secrets are at issue. The sealing should be no broader than that necessary to protect the trade secrets."
- Corporate espionage information; sentence of six months; a motion to seal the case was filed with the information and signed by a magistrate judge the following day. According to the judge, the case was sealed because it involved a company's trade secrets.

High-Profile Defendant

There was one case sealed because the defendant had a high profile. According to the judge, "it seemed a good idea at the time." A person of influence failed to respect the authority of an officer on federal land. The person was initially charged by sealed indictment in a criminal case, but ultimately he pleaded guilty to a misdemeanor in a magistrate judge case and paid a fine. The magistrate judge case is not sealed.

Attorney Discipline

There was one sealed criminal contempt case against an attorney who was later disbarred for a time; the presiding judge sealed the case because of the sensitivity of the issue.

Other

One criminal case was sealed to facilitate getting another district to supply sealed records concerning the defendant's psychiatric examination.

Sealing Function Used for Cases That Are Not Sealed

There were 12 criminal cases designated sealed in CM/ECF that were not really sealed. One sealed case was merged with another case against the same defendant, which is not sealed, and the clerk's office thinks that it may be that the first case was sealed to ensure all filings are in the lead case, but the clerk's office was not sure. Three cases were sealed after intradistrict transfers: records with the original case numbers are sealed, but records with the new case numbers are not. Seven sealed records resulted from filing errors; instead of deleting the erroneous records, the courts sealed them. According to a presiding judge, one sealed indictment against six defendants should never have been filed; upon our bringing the case to the judge's attention, it was deleted.

Cases That Should Not Have Been (Still) Sealed

There were 23 sealed cases that, upon our bringing them to the court's attention, either the clerk's office or the judge determined should not have been sealed, or should not have still been sealed. For that reason, 11 were unsealed. Of the remaining 12 cases, nine apparently were sealed because of clerk's office errors and three apparently were sealed because the government neglected to ask the court to unseal them.

Cases Not Counted as Sealed But Regarded by the Courts as Sealed

There are 20 criminal cases, in two districts, that are regarded as sealed in their courts, but were not counted as sealed because some information about them is available on PACER.

Cases That Became Unsealed After We First Looked at the Data

There were 102 criminal cases that were sealed when we first looked at the data but became unsealed by the time we analyzed the individual courts' data. The import of this statistic is just an indication of the extent to which the data were in flux during this study.

Sealed Magistrate Judge Cases

We found 15,177 sealed magistrate judge cases, among 97,155 magistrate judge cases filed in 2006 (16%). Among the districts, the median percentage of sealed cases among 2006 magistrate judge cases was 20%.

Many of the sealed magistrate judge cases are not in CM/ECF. Some courts do not enter magistrate judge cases in CM/ECF. More typically, either the kinds of cases that get sealed, or sealed cases specifically are less likely to be entered into CM/ECF. We determined that 39% of the sealed 2006 magistrate judge cases were not entered into CM/ECF.

If all of a district's sealed magistrate judge cases were in CM/ECF, we typically selected two at random for classification. If some or all of the cases were not in CM/ECF, then we asked the court for classification information, and often this meant that we got classification for all of the court's cases. There were 21 courts with small numbers of sealed magistrate judge cases (fewer than 30), 37 courts with large numbers of sealed magistrate judge cases (more than 100), and 29 courts with medium numbers of sealed magistrate judge cases. Five courts had no sealed magistrate judge cases, and an additional two courts had no magistrate judge cases at all. We obtained classification data for all sealed magistrate judge cases in 31 courts (10 with large numbers, nine with medium numbers, and 12 with small numbers), and we relied on samples for 49 courts (22 with large numbers, 18 with medium numbers, and nine with small numbers). For seven courts, we obtained complete classification information for a large fraction of the cases and relied on sampling for the rest (five with large numbers and two with medium numbers).

Sealed Cases in Federal Courts

The cases that we looked at suggest that 83% of sealed magistrate judge cases are warrant-type applications, 10% are sealed complaints, 6% are grand jury and CJA matters, and 1% are other matters. One district's magistrate judge cases could not be individually classified, but the types of magistrate judge cases that are sealed in that district are similar to those in other districts. In addition, there was a very small number of other sealed magistrate judge cases that we could not classify, representing 0.14% of all sealed magistrate judge cases.

Warrant-Type Applications

Sealed warrant-type applications include search warrants (54%); seizure warrants (3%); pen registers, trap and traces, tracking devices, and the like (37%); and other permissions to obtain information (6%). Among the latter group are inspection warrants; wiretaps; and orders to produce records, such as tax returns or telephone records.

Sealed Criminal Complaints

A criminal complaint, based on an affidavit by a witness that the defendant committed a crime, is typically filed in order to establish the court's jurisdiction over the defendant for purposes of detention pending indictment. Also, misdemeanors can be prosecuted by complaint; this happens more frequently in districts with substantial amounts of federal or Indian land.

Typically, these cases are filed with magistrate judges and given magistrate judge case numbers. Often they are sealed because investigations are pending, and more particularly they may be sealed pending the defendant's apprehension. A criminal complaint might also be sealed because the defendant is a juvenile. Criminal complaint magistrate judge cases typically merge with criminal cases following the filing of an indictment or an information. Although the criminal case will quite often not be sealed, or will become unsealed, and the magistrate-judge-case docketed events that merge with the criminal case will be public in the criminal case file, the original magistrate judge case file may remain sealed.

Often magistrate judge cases remain sealed for the same reasons that criminal cases remain sealed, such as because the complaint was dismissed before the defendant appeared, the defendant is a fugitive or a juvenile, or the defendant is a young adult prosecuted for a minor drug crime and the record is potentially expungeable. We also observed a couple of sealed criminal complaints that appear to have been sealed because the crime victims were minors.

Grand Jury and CJA Matters

Sealed magistrate judge case records that pertain to grand jury matters typically involve appointment of counsel for material witnesses and investigation targets. Magistrate judge case numbers may also be used to document the detention of material witnesses.

Other Matters

Other sealed matters include extraditions; records pertaining to prosecutions in other jurisdictions, such as proceedings under Rule 5; matters pertaining to supervised release; assistance with foreign cases, such as letters rogatory; and forfeitures. We observed a few cases that the court told us were filed under the All Writs Act. We were told that a couple of other records pertained to sealed indictments. Two sealed records turned out to have been given the wrong case type, and the court may have elected to seal them instead of deleting them.

Sealed District Court Miscellaneous Cases

We found 8,121 sealed miscellaneous cases, among 24,099 miscellaneous cases filed in 2006 (34%). Among the districts, the median percentage of sealed cases among 2006 miscellaneous cases was 17%.

Most districts use the designator “mc” in case numbers to represent miscellaneous cases, but one district uses “mi” and another district uses “ms.” Some districts use “mc” for miscellaneous civil cases and a different designator for miscellaneous criminal cases: the most popular are “cm” and “mr” (three districts each); others are “xr,” “dm,” “mcr,” and “misc” (one district each). Nine districts use “sm” to designate sealed miscellaneous cases.

As with sealed magistrate judge cases, sealed miscellaneous cases are often not entered into CM/ECF. We determined that 42% of the sealed 2006 miscellaneous cases were not entered into CM/ECF.

As we did with sealed magistrate judge cases, we often used sampling to study sealed miscellaneous cases, but we used a somewhat larger minimum sample size. If all of a district’s sealed miscellaneous cases were in CM/ECF, we typically selected five at random for classification. If some or all of the cases were not in CM/ECF, then we asked the court for classification information, and often this meant we got classification for all of the court’s cases. There were 44 courts with small numbers of sealed miscellaneous cases (fewer than 30), 24 courts with large numbers of sealed miscellaneous cases (more than 100), and 15 courts with medium numbers of sealed miscellaneous cases. Eight courts had no sealed miscellaneous cases, and an additional three courts had no miscellaneous at all. We obtained classification data for all sealed magistrate judge cases in 47 courts (four with large numbers, five with medium numbers, and 38 with small numbers), and we relied on samples for 33 courts (17 with large numbers, 10 with medium numbers, and six with small numbers). For three courts (all with large numbers of sealed miscellaneous cases), we obtained complete classification information for a large fraction of the cases and relied on sampling for the rest.

The cases we looked at suggest that 58% of sealed miscellaneous cases are warrant-type applications, 30% are grand jury and CJA matters, 3% are requests from foreign governments for assistance with cases in their courts, 1% are forfeitures and seizures, and 8% are other matters. There was a very small number of sealed miscellaneous cases that we could not classify, representing 0.14% of all sealed miscellaneous cases.

Warrant-Type Applications

There is some variety in how districts type cases. Sealed warrant-type applications have miscellaneous case numbers approximately one-third as often as they have magistrate judge case numbers. Some districts use magistrate judge case numbers for one type of warrant-type application, such as search warrants, and miscellaneous case numbers for other types of warrant-type applications, such as pen registers.

Sealed warrant-type applications with miscellaneous case numbers include search warrants (13%); seizure warrants (2%); pen registers, trap and traces, tracking devices, and the like (60%); wiretaps (10%); and other permissions to obtain information (15%). Among the latter group are inspection warrants and orders to produce records, such as tax returns or telephone records.

Grand Jury and CJA Matters

Sealed miscellaneous case records that pertain to grand jury matters typically involve motions pertaining to grand jury proceedings, such as motions to quash grand jury subpoenas or disputes over application of the attorney–client privilege. Sealed CJA matters that for one reason or an-

other are not included in criminal or habeas corpus case files are about as often given miscellaneous case numbers as they are given magistrate judge case numbers.

Assistance with Foreign Cases

Letters rogatory and similar requests for assistance with foreign cases would typically be sealed to protect the confidentiality of foreign investigations.

Forfeitures and Seizures

Some forfeiture and seizure cases are given civil case numbers, and some are given miscellaneous case numbers, in part because of the variety among districts in how they assign case types. In general, however, forfeiture actions are more likely to receive civil case numbers; miscellaneous case numbers are more likely to be used for seizures and actions *related to* forfeitures, such as motions for extension of time.

Other Matters

There was a miscellany of other sealed miscellaneous cases:

- Subpoena: We found a few sealed cases in a few districts that appeared to concern subpoenas in matters other than grand jury proceedings. Included are motions to compel.
- Writ of habeas corpus ad testificandum: We found, in a few districts, a few sealed petitions for writs of habeas corpus ad testificandum.
- Speedy trial: We found one sealed motion for relief from the Speedy Trial Act, in a magistrate judge prosecution on a criminal complaint, because of negotiations for the defendant's cooperation. According to the clerk's office, the motion should have been filed in the magistrate judge case, and the court unsealed the case once we brought it to the court's attention.
- Appointment of commissioner: Among the cases we selected at random was a sealed appointment of a commissioner. In addition, we found a sealed appointment of an assistant U.S. attorney as a commissioner to collect evidence from witnesses pursuant to a treaty, but we counted this as a case pertaining to requests from foreign governments.
- District judge assignment: Looking at a sample of sealed miscellaneous cases in one district, we found two sealed miscellaneous records created for the purpose of district judge assignment. One involved an appeal from a magistrate judge decision, and the other involved a probation violation. Apparently the miscellaneous cases were sealed just because the related magistrate judge cases were sealed.
- Prisoner petition: One district's only sealed miscellaneous case was an unsuccessful emergency action by a prisoner for protection.
- Jail admission: In a district that kept all miscellaneous criminal cases sealed, in ICMS instead of CM/ECF, there was one sealed order authorizing interpreters' admission to a county jail.
- Supervised release: In two transferee districts, we found one sealed transfer of jurisdiction for supervised release related to a sealed conviction on an information and one expunged transfer of probation jurisdiction.
- Temporary transfer of custody: Among the sample of cases we examined in one district, we found two sealed temporary transfers of defendant custody.

Sealed Cases in Federal Courts

- Extradition: We found three sealed extradition requests. For one of them, the court determined, upon our bringing the case to its attention, that the case should not be sealed.
- Classified information: We found one order appointing security officers in an ex parte proceeding to determine whether classified information was discoverable in a related criminal case.
- Return of property: We found one sealed motion for return of illegally seized property; the court ordered the case converted to a sealed civil case.
- Restraining order: We found four sealed miscellaneous cases pertaining to restraining orders. Apparently the applications for restraining orders were filed under seal so as to not tip off the civil or criminal defendants before a complaint or an indictment was filed.
- Child custody: We found that one sealed miscellaneous case concerned a matter in the state's family court and a request that a child not be removed from the district.
- Marriage: Among the cases selected at random in one territorial court, we found three sealed miscellaneous cases that were opened for marriages performed by judges in the district; these were sealed because they contain personal identifying information.
- Administrative judgment: We found one sealed miscellaneous case concerning a Department of Health and Human Services judgment.
- Bar admission: We found one sealed motion for admission to the state bar.
- Attorney discipline: We found seven sealed miscellaneous cases pertaining to attorney discipline.
- Medical or mental health matter: We found two cases concerning medical or mental health matters. One case concerned forced medication of a criminal defendant. The other was a motion to produce mental health evidence related to a capital prosecution in which the defendant had given notice of raising a mental health issue and the court ordered firewall attorneys to examine the mental health evidence..
- Petit juror contempt: We found one sealed miscellaneous case that was a contempt proceeding against a petit juror.
- Taint team: we found one sealed miscellaneous case that was a "motion to use a taint team."
- FTC order: One district's only sealed miscellaneous case was a sealed order on a sealed motion by the Federal Trade Commission.
- Assistant U.S. attorney appointment: One district used four sealed miscellaneous case numbers for appointments of assistant U.S. attorneys.
- Arbitration: We found three sealed miscellaneous cases in one district that pertain to arbitration.
- Multidistrict litigation: One district regarded as sealed miscellaneous records sealed documents filed in various multidistrict consolidations assigned to the district.
- Dummy administrative case number: We found a few sealed miscellaneous cases in a few districts that are not really cases, but collections of records, such as a record of all sealed indictments or a way-station for new cases filed electronically by attorneys.
- Incorrect record: One court sealed a miscellaneous case filed by a pro se litigant because the filing was judged to be improper and not accepted and "so the public wouldn't find the name of the pro se person who ended up not filing a document."

Other District Court Cases

Multidistrict and Other Consolidations

Fourteen districts gave multidistrict and other civil consolidations a special case type: “md” in 12 of the districts; the other two districts used “ml” and “mn” respectively. None of the 30 cases of this type filed in 2006 is sealed.

Petty Offense Cases

There are 33 districts that docket petty offense cases separately, generally using the case type “po.” At least 20,542 such cases were filed in 2006, and 46 of them are sealed (0.2%). At least one district had additional petty offense cases not entered into CM/ECF. At least some of the sealed petty offense cases have juvenile defendants.

CVB Cases

Traffic tickets, and their equivalents, on federal land are handled by a Central Violation Bureau (CVB). One district used the case type “tk” to enter into CM/ECF a CVB case, which is not sealed. Other districts told us that CM/ECF did not easily accommodate CVB cases. One district maintains records of CVB cases in magistrate judges’ chambers; they are not sealed, but neither are they available in the clerk’s office. There were 200 such cases filed in that district in 2006.

Grand Jury Cases

All districts keep grand jury records, and grand jury proceedings are sealed. Five districts kept records pertaining to grand jury proceedings in CM/ECF using “gj” as the case type, and one district kept such records using “~gr.”

Material Witness Cases

One district used a special sequence of “mw” case numbers for material witness cases; 11 were filed in 2006, and none is sealed.

Habeas Corpus Cases

One district used a special sequence of “hc” case numbers for habeas corpus cases; 242 were filed in 2006, and none is sealed.

Prisoner Cases

One district used a special sequence of “ct” case numbers for prisoner civil rights cases; 149 were filed in 2006, and none is sealed. Another district used to use “pc” for prisoner cases, but the two such cases filed in 2006 were subsequently given civil case numbers because the district no longer uses this case type.

Transfers of Jurisdiction

Four districts used special sequences for transfers of jurisdiction for supervised release or probation; half used “tp” as the case type and half used “pt.” There were 235 such cases filed in 2006, and none is sealed.

Search and Seizure Warrant Cases

Three districts used “sw” as a case type for search or seizure warrants. There were 1,079 such cases filed in 2006, and 413 were sealed (38%).

Wiretaps

One district used a special sequence of “wi” case numbers for wiretap cases. There were 35 such cases filed in 2006, and all are sealed.

Pen Registers

One district used a special sequence of “pr” case numbers for pen registers. There were 107 such cases filed in 2006, and all are sealed. Another district also docketed pen registers separately from other cases, but did not enter the cases in CM/ECF in 2006. There were 22 such cases filed in 2006; according to the court, such cases are almost always sealed.

Foreign Judgments

Two districts used a special sequence of “fj” case numbers for foreign judgments. There were 23 such cases filed in 2006, and none is sealed.

Registrations of Judgment

One district used a special sequence of “rj” case numbers for registrations of judgment. There were 26 such cases filed in 2006, and none is sealed.

Out-of-City Judge Cases

One district used a special sequence of “oc” case numbers to represent out-of-city judges. There were two such cases filed in 2006. The cases are not sealed, but the docket sheets on PACER contain very little information.

Attorney Discipline and Administrative Proceedings

There were 124 attorney discipline cases or administrative proceedings filed in 2006 and assigned special case types. Of these, 100 were sealed (81%). Two districts used special sequences of case numbers for attorney discipline cases; one used “at” as the case type and the other used “ad.” There were 75 such cases filed in 2006, and all are sealed. In addition, another district used a special sequence of “gp” case numbers for reciprocal discipline cases. There were 41 such cases filed in 2006, of which 17 were sealed (41%). Two more districts used special sequences of “ap” case numbers for administrative proceedings, most of which concern attorney discipline. There were eight such cases filed in 2006, and all are sealed.

Sealed Case Logs

One district used a special “sc” case number in each office for sealed case logs, and these records are not sealed.

Case Shells to Facilitate Electronic Filing

In two districts, attorneys filed cases by creating in CM/ECF a temporary case with “at” as the case type. Once the filing fee was paid, the court converted the cases to “cv” cases and sealed the “at” cases to make sure that future filings would be in the “cv” cases. In four districts, an attorney

opened a case by filing the complaint in an annual shell case that included all cases for the district, all cases for each division in the district, or a separate shell for civil and criminal cases. Only one of these districts did not seal the shell. Case types used for these shells included “at” and “tc”; in one district, “av” was used for civil cases and “ar” was used for criminal cases.

Noncompliance Cases

In one district, there were four cases used for orders related to noncompliance with electronic filing procedures, using “nc” as the case type. None of these cases is sealed.

Sealed Appeals

Approximately 0.13% of the appeals filed in 2006 were sealed when we looked at them in 2008. When a district court case is sealed, the clerk’s office for a court of appeals usually will automatically seal an appeal. Approximately two-thirds of the sealed appeals in our study involved grand jury matters, juvenile defendants, or cooperating defendants.

Number of Sealed Cases

There were 64,475 appeals filed in 2006 in the courts of appeals for the 13 circuits. (The filing year for the Court of Appeals for the Federal Circuit is fiscal year 2006; the filing year for the other courts of appeals is calendar year 2006.) Examining 2006 cases in 2008, we discovered 82 sealed appeals. We consider a case sealed if the public is denied access to all docket information as well as all documents filed in the case. Searches for case numbers corresponding to sealed appeals in the latest version of PACER results in the message “Case Under Seal.”

There were eight courts of appeals with sealed 2006 appeals and five courts of appeals without. Some of the courts without sealed 2006 appeals have policies against completely sealed docket sheets.

One court of appeals recently unsealed five cases pursuant to a new court policy that even if all documents in the file are sealed the docket sheet should be suitably redacted so that it does not need to be sealed. Another three cases were unsealed by another court as a result of a determination, upon our bringing them to the court’s attention, that they should not have been sealed in the first place. For purposes of this study, we count these cases as sealed in order to minimize the difficulty of studying a moving target and to limit the impact of the study on the object of study.

Types of Sealed Cases

There were 18 sealed appeals concerning grand jury matters (22%). Another 18 were appeals from juvenile prosecutions (22%).

There were 17 other criminal appeals (21%). It appears that they all involve cooperating defendants, but courts of appeals often do not know why cases arrive sealed. Sometimes the district court case was sealed when the appeal was taken, so the appeal is also sealed, but the appeal was not subsequently unsealed when the district court case was. One appeal was sealed on defense counsel’s motion, granted by a court staff attorney, but the others were sealed by the clerk’s office on filing because the district court case was sealed. Two were unsealed upon our bringing them to the court’s attention and the clerk’s determination that they should not have been completely sealed.

There were 12 appeals from civil cases closely related to criminal cases (15%): habeas corpus and similar actions, some of which were pro se prisoner petitions. There were also two sealed immigration appeals and one sealed request for excess CJA compensation. That means that 68 of the sealed appeals relate to criminal matters (83%) and the remaining 14 sealed appeals are con-

ceptually civil as well as technically civil appeals (17%). (One sealed appeal was an appeal from a sealed case in the court of claims, and the court of appeals does not know why the lower-court case was sealed.)

Three sealed civil appeals were attorney discipline cases, sealed in the courts of appeals because they were sealed in the district courts. Two sealed civil appeals were appeals from *qui tam* actions. Another sealed civil appeal was a withdrawn appeal of an order denying discovery in a case in another country, also sealed in the court of appeals because it was sealed in the district court.

One sealed civil appeal was a settled appeal from summary judgment for the defendant in an action alleging improperly obtaining medical records showing the plaintiff to be HIV-positive. Upon our bringing this case to the court's attention, the clerk determined that the case should not have been completely sealed. Another sealed civil appeal was an appeal of a preliminary injunction in a sealed unfair competition case; although the district court case became unsealed after the notice of appeal was filed, the appeal was not unsealed.

One sealed civil appeal, from a wrongful termination case, was supposed to be unsealed when the merits panel denied the pending motion to keep the case sealed. But because of a technical error, the case remained sealed on PACER until we brought it to the court's attention. The same court unsealed four other cases—two companion cases concerning sex discrimination and two companion cases concerning insurance coverage—pursuant to its new policy against completely sealed docket sheets.

In addition to the 82 sealed appeals described above, there are 88 appeals that are sealed on PACER because of technical difficulties in some courts' conversion to CM/ECF, but parts of the case filed would be available for inspection at the clerks' offices. Cases with sealed documents became coded as completely sealed, and the courts judged the effort to fix the coding too great for most closed cases. In another court, 40 cases not sealed are unavailable on PACER because of a local policy keeping docket sheets for capital cases off PACER.

Procedures and Records

If part of a case file is sealed, there can be a public record of what is sealed and why. If the whole case is sealed, usually the only public record would be whatever is said in a public opinion resolving the case.⁷ If a case is sealed on motion, the reason for sealing the case is in the record, although usually not on the docket sheet. If an appeal is sealed automatically because the case appealed from is sealed, often the reason for sealing is apparent, but sometimes even the court of appeals does not know why the case is sealed. Also, if an appeal is sealed automatically because the district court case is sealed when the appeal is taken, the only way for the appeal to become unsealed upon the unsealing of the district court case is on motion.

All but 11 of the appeals were sealed automatically—sealed by the clerk's office without judicial action. Five cases sealed on motion were subsequently unsealed pursuant to the court's new policy against sealed docket sheets. Four cases sealed on motion concerned cooperating defendants; two cases sealed on motion were immigration cases. In general, sealing motions are decided by motions judges or merits panels, depending upon when the motion is filed. But one court authorized a staff attorney to decide a motion to seal.

If a docket sheet is sealed after being available on PACER for some time, what was public before the docket sheet was sealed can linger on the Internet. In particular, CourtLink, which is now owned by Lexis, makes available some docket information for many sealed cases.

7. A public opinion might be either published or unpublished. Electronic services such as Westlaw and Lexis post public unpublished opinions as well as published opinions.

Sealed Cases in Federal Courts

If a sealed case is resolved by published opinion or unpublished public opinion, a public record of the nature of the case is available on Westlaw and Lexis. Thirteen of the sealed appeals were resolved by published opinions (16%) and 27 were resolved by unpublished but public opinions (33%); 36 others were resolved without opinions (44%) and three are still pending (4%).

Three appeals were resolved by sealed opinions or orders (4%). Two of these were resolved by sealed opinions: one appeal concerned grand jury subpoenas and was dismissed for lack of jurisdiction after oral argument, and the other was an appeal from a criminal case. Another appeal was resolved by sealed order dismissing the appeal for lack of prosecution. This was a prisoner's appeal from a petition for writ of mandamus by a cooperator.

Bankruptcy Court Cases

Bankruptcy courts essentially do not have sealed cases. Examining all 651,488 cases filed in 2006, we found two courts with sealed cases: one court had expunged five cases and another court had expunged one case upon a determination that the cases were fraudulently filed by someone falsely claiming to be the debtor.⁸

Other courts told us that they expunged fraudulent filings in the past, but several of the courts that have previously expunged fraudulent filings told us that they do not do that now. Instead, they keep the record public but redact all identifying information.

We discovered three cases in one court and one case each in two other courts with public docket sheets, but all the other documents in the case files are sealed. We do not count these as sealed cases, because we would have had to use a very different method to find all of them.

Conclusion

Civil Cases

Civil cases appear to be sealed usually for one of two reasons: either they are qui tam actions filed under the False Claims Act, which requires that the cases be filed under seal, or they are sealed because one or both sides of the litigation want to keep facts in the case private.

The False Claims Act contemplates that a qui tam action under the Act will be kept sealed for up to 60 days while the government investigates the matter and decides whether to intervene. But the statute provides for grants of extensions of time to the government, so many False Claims Act cases remain sealed several years after filing while the government continues to investigate. It is not clear, however, why dozens of cases, in a one-year filing cohort, remained sealed even after being dismissed. In response to our inquiries, some judges noted that no one asked that the cases be unsealed, and others noted cases dismissed without prejudice.

Other sealed civil cases are sealed either because one side wants the case sealed and the other side does not mind or because both sides want the case sealed. These cases are usually sealed with judicial permission. Some districts, however, automatically seal a case if a request to seal it is filed and the case will become unsealed only if a judge acts to unseal it. If the case is withdrawn or dismissed with little judicial action, it might remain sealed without explicit judicial permission to seal it. If a judge does affirmatively grant permission to seal a case, responses to our inquiry suggest that an important consideration is how much judicial involvement there was in the case. Some judges believe that a public record of cases that settle soon after filing is less important than a public record for other cases.

8. There are 90 bankruptcy courts in the 50 states, the District of Columbia, and Puerto Rico—one court serves both the Eastern and Western Districts of Arkansas—and there are also bankruptcy divisions of the three territorial district courts in Guam, the Northern Mariana Islands, and the Virgin Islands.

It appears to be the case that some civil cases remain sealed even after the reason for sealing has elapsed. In addition to dismissed or transferred False Claims Act cases, temporary restraining orders, forfeitures, and seizures might include such cases. Some courts have implemented procedures to periodically check whether sealed records—individual documents or whole cases—can be unsealed, in part because sealed records are more burdensome for clerks' offices to maintain than open records.

Some sealed civil cases were public for a time. On a few occasions, parties sought complete sealing as a condition of settlement.

Except for *qui tam* actions under the False Claims Act in which the government has not yet decided whether to intervene, and perhaps grand jury matters, for a large percentage of the sealed civil cases either the reason for sealing the whole case has elapsed or the reason for sealing the whole case could be satisfied by redacting parts of the case file.

Criminal Cases

A criminal case might be sealed (1) so as not to tip off a defendant before the defendant is apprehended, (2) to protect a juvenile defendant's privacy, or (3) to preserve the secrecy of an ongoing investigation or protect the defendant's safety if the defendant is a cooperator.

Some sealed indictments remain sealed even after the cases are dismissed because the defendants never appeared in the sealed cases and no one asked the court to unseal them. Many juvenile prosecutions are sealed, but sealing the whole case is not the only way to protect a juvenile defendant's identity. Some prosecutions of cooperators may remain sealed even after the reason for sealing expires.

Other District Court Records

A criminal complaint, usually assigned a magistrate judge case number, may be sealed for the same reason that an indictment might be sealed—so as to not tip off the defendant until the defendant is apprehended. Typically, the magistrate judge case will merge with a criminal case once an indictment or information is filed. Sometimes the original magistrate judge case remains sealed even after the criminal case is unsealed and all the documents in the magistrate judge case have become part of the unsealed criminal case.

Search warrants and other judicial actions pertaining to investigations are frequently sealed. Perhaps they do not need to be sealed so often, and perhaps they do not need to be sealed for so long. *See* Hon. Stephen Wm. Smith, *Kudzu in the Courthouse: Judgments Made in the Shade*, 3 Fed. Cts. L. Rev. 177 (2009).

Appeals

Most sealed appeals are sealed because the district court cases appealed from are sealed, and commonly the district court case is sealed either because it is a grand jury matter or because it is a prosecution of a juvenile or a cooperator. Cases sealed for these reasons typically do not require judicial action to keep the appeal sealed.

Sealed appeals are almost always resolved by public opinion, either published or unpublished, or without an opinion, such as a dismissal for lack of jurisdiction. Very seldom are sealed appeals resolved by sealed opinions.

Bankruptcy Court Cases

There is essentially no complete sealing of cases in the bankruptcy courts.

Answers to Research Questions

1. What kinds of cases are sealed? Most sealed cases are False Claims actions; other civil actions that the parties want to keep private; criminal cases against fugitives, juveniles, and cooperators; grand jury matters; or investigation permissions, such as search warrants, wiretaps, and pen registers.
2. How is sealing requested? A sealed case is typically filed with a request to keep the case sealed. Cases arising from sealed cases, such as grand jury matters or appeals from sealed cases, are typically sealed automatically. Sometimes a request to seal the case does not arise until after the case has been public for a time, such as when parties ask to seal a case at settlement.
3. How is sealing decided?
 - a. Who decides? In civil cases, there usually is a record of judicial approval for the sealing of a whole case, unless the reason for sealing is obvious, such as a False Claims action or a grand jury matter. Among other case types, perhaps the sort of case most likely to have explicit judicial approval for sealing is a prosecution of a cooperator.
 - b. Is there an opportunity for public challenge? If a case is sealed automatically or as a result of a request to seal made at filing, there will almost never be an opportunity for public challenge, because there will be no public record of the case. The sealing of cases that began as public cases could be challenged by members of the public who are closely following the case. Our method was not designed to discover unsuccessful efforts to completely seal a case, and such efforts would be unlikely to succeed if the news media were actively interested in the case.
4. Is there a record of what is sealed and why?
 - a. Is there a public record? There is seldom a public record of a completely sealed case. Exceptions include highly redacted docket sheets in PACER in districts that provide these for sealed cases and public opinions resolving sealed appeals.
 - b. Is there a record on the docket sheet? Docket sheets seldom state explicitly why a case is sealed. The reason for sealing, however, can often be inferred—an action under the False Claims Act, reference to a juvenile defendant or grand jury proceeding, a criminal case without an appearance by the defendant, etc. The reasons for more discretionary sealings are seldom reflected in the docket sheet, although they may be reflected in documents within the sealed case file. A commonly stated reason for sealing a case is “for good cause.”
5. Are cases unsealed when they no longer need to be sealed? Frequently cases are unsealed when the reason for their sealing expires. Several cases were unsealed upon our bringing them to the courts’ attention because this does not happen automatically.