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Public Availability or Practical Obscurity: The Debate Over Public Access to Court Records on the Internet

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PUBLIC AVAILABILITY OR PRACTICAL OBSCURITY: THE DEBATE OVER PUBLIC ACCESS TO COURT RECORDS ON THE INTERNET

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The opportunities presented by technology should not encourage us to take a step backward.

INTRODUCTION

The Internet has made the distribution, acquisition, and review of information easier and more efficient.[1] While this has been a boon to many industries,[2] it has also made information that many individuals might consider private available for wide public consumption.[3] This tension — between what is perceived to be "private" and what ought to be private — is currently being played out state by state in arguments concerning public access to court records on the Internet.[4] The most contentious issue is whether information currently public and available to anyone who wishes to see it at local courthouses should also be available on the Internet.[5]

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1. *See generally* LAWRENCE LESSIG, THE FUTURE OF IDEAS: THE FATE OF THE COMMONS IN A CONNECTED WORLD (2002).

2. *See, e.g.*, David A. Vise, *Google Posts Big Gains in Sales, Profit, 3rd-Quarter Earnings More Than Doubled*, THE WASH. POST, Oct. 22, 2004, at E1; Saul Hansell, *Yahoo Tripled Profits in Quarter, Thanks to Google Shares*, N.Y. TIMES, Oct. 14, 2004, at C10.

3. *See* LESSIG, *supra* note 1.

4. For information about various states considering access to court documents on the Internet as well as a state by state comparison, see *A Quiet Revolution in the Courts: Electronic Access to State Court Records,* (last modified Aug. 5, 2004), *at* http://www.cdt.org/publications/020821courtrecords.shtml; *see also* the National Center for State Courts, *at* http://www.courtaccess.org/ (last visited Aug. 5, 2004).

5. *See generally Access to Electronic Court Records: An Outline of Issues and Legal Analysis, available at* http://www.courtaccess.org/legalwritings/chadwick2001.pdf (last visited Aug. 1, 2004); *see also* J.B. Shelleby, *Online Court Records Raise Privacy Issues*, IPSWICH CHRONICLE (Feb. 19, 2003), *at* http://www.courtaccess.org/states/ma/documents/maarticle,shelleby-onlinerecprivacyconcerns03.pdf (last visited Aug. 1, 2004).

Does changing the method of access to public court documents affect privacy or security in such a way that the Internet should be treated differently for purposes of the standard First Amendment and common law access analysis? Does the fact that the public may now view documents that have been shrouded in the practical obscurity of courthouses change the terms of the argument?

Part I of this Note explores the history of access to court proceedings and records found in United States Supreme Court and New York State jurisprudence. Part II examines recent federal legislation adopted by New York that limits access to portions of documents posted on the Internet that have been freely available for public viewing in courthouses, for example, personal identifiers such as Social Security numbers. Part III argues that the constitutional and common law presumption in favor of public access to court documents should not shift depending on the medium. Part IV concludes that the First Amendment and common law right to inspect court documents applies with equal force to documents made available by courts on the Internet. New legislation adopted by New York, among other states, should not change the fact that what is public under well-established First Amendment principles should remain public regardless of the mode of access.

I. The History and Presumption of Openness to Court Proceedings and Records

The right of access to court proceedings and records is of fundamental importance.[6] The interests of justice, free speech and democracy depend on awareness and concern about the justice system and how courts serve the community.[7] Nevertheless, this right is not absolute; there are competing privacy and security interests that are usually weighed in considering the degree of public accessibility to court proceedings and records.

6. *In re* Oliver, 333 U.S. 257, 266 (1948) (Black, J.) (footnotes omitted) (stating "[t]his nation's accepted practice of guaranteeing a public trial to an accused has its roots in our English common law heritage").

7. Craig v. Harney, 331 U.S. 367, 373 (1947) (stating that "[a] trial is a public event. What transpires in the court room is public property").

A. The Supreme Court View

While there is no express constitutional provision regarding access to public court records and proceedings, the Supreme Court first recognized a common law right to inspect and copy public records and documents in *Nixon v. Warner Communications, Inc.*[8] In *Nixon*, petitioners sought permission to copy and broadcast the public portion of audio tapes presented during the criminal trial of the Watergate investigation.[9] Transcripts of the tapes were available and had been played in open court.[10]

Although the Supreme Court ultimately denied the request, it stated that "the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."[11] This right is not absolute. However, the Court acknowledged that "[e]very court has supervisory power over its own records and files and access has been denied where court files might have become a vehicle for improper purposes."[12] It went on to identify several circumstances that may define an improper purpose.[13] The right must yield, the Court held, to make certain that records are not "used to gratify private spite or promote public scandal through the publication of the painful and sometimes disgusting details of a divorce case."[14] Also improper are situations when "files could serve as reservoirs of libelous statements for press consumption,"[15] or "as sources of business information that might harm a litigant's competitive standing."[16]

8. 435 U.S. 589 (1978).

9. *Id.*

10. *Id.*

11. *Id.* at 597.

12. *Id.* at 598.

13. *Id.*

14. *Id.* (citing *In re* Caswell, 18 R.I. 835, 836, 29 A. 259 (1893)).

15. *Id.* (citing Park v. Detroit Free Press Co., 72 Mich. 560, 568, 40 N.W. 731, 734-735 (1888); *see also* Cowley v. Pulsifer, 137 Mass. 392, 395 (1884) (per Holmes, J.); Munzer v. Blaisdell, 268 App. Div. 9, 11, 48 N.Y.S.2d 355, 356 (1944); Sanford v. Boston Herald Traveler Corp., 318 Mass. 156, 158, 61 N.E.2d 5, 6 (1945)).

16. *Id.* (citing Schmedding v. May, 48 N.W. 201, 202 (Mich. 1891) and Flexmir, Inc. v. Herman, 40 A.2d 799 (N.J. Ch. 1945)).

Subsequent cases have further articulated a presumption of access to court records and proceedings.[17] In *Richmond Newspapers, Inc. v. Virginia*, the leading case in this area, the Supreme Court held that the First Amendment affords the public and the press a constitutional right of access to criminal trials.[18] The Court described such openness of process as "an indispensable attribute of an Anglo-American" jurisprudence.[19]

The value of open judicial proceedings and records is that it makes transparent the actions of the court.[20] It discourages perjury and the misconduct of the trial participants and assures that decisions are not made as a result of secret bias or partiality.[21] These values have been supported and enunciated by the Supreme Court in several cases.[22]

In *Globe Newspaper Co. v. Superior Court*, for example, a newspaper was denied access to a criminal trial involving the rape of minors.[23] The Supreme Court invalidated a statute that excluded the press and public from attending trials in cases involving sex crimes

17. *See, e.g.*, Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980); U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989); Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982).

18. *Richmond Newspapers*, 448 U.S. 555, 580 (1980) (reversing a closure order excluding the press and the public from a murder trial). Justice Burger noted "[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing". *Id.* at 572.

19. *Id.* at 569.

20. *See, e.g.*, Gannett Co. v. DePasquale, 443 U.S. 368, 412 (1979) (J. Blackmun dissenting) (stating "[t]he public-trial guarantee, moreover, ensures that not only judges but all participants in the criminal justice system are subjected to public scrutiny as they conduct the public's business of prosecuting crime"); Sheppard v. Maxwell, 384 U.S. 333, 350 (1966) (stating that open access to the judiciary "guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism"); Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 492 (1975) (holding that trial publicity "serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice . . . The commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions . . . are without question events of legitimate concern to the public").

21. *See, e.g.*, *Globe Newspaper*, 457 U.S. 596 (holding that there is a First Amendment right of access for the public and press to judicial proceedings).

22. *Id.*; Press-Enterprise v. Superior Court, 464 U.S. 501 (1984); *Reporters Comm.*, 489 U.S. 749.

23. *Globe Newspaper*, 457 U.S. at 598.

against minors.[24] In doing so, the Court stated that criminal trials historically had been open to the press and general public.[25] In addition, the Court noted, the First Amendment right of the public and media to attend criminal trials plays a "significant role in the functioning of the judicial process and the government as a whole" by ensuring that "the constitutionally protected 'discussion of governmental affairs' is an informed one."[26] An absolute restriction on access was not appropriate, the Court held, even given the young age of the minors and the state interest in protecting them.[27]

In *Press-Enterprise v. Superior Court*, the media were excluded from an individual *voir dire* examination in a criminal case involving the rape and murder of a teenage girl.[28] In holding for Press-Enterprise, the Court put great weight on the history and presumption of openness:

> The value of openness lies in the fact that [the public] not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.[29]

The Court also noted that the privacy interests of the potential jurors "must be balanced against the historic values we have discussed and the need for openness of the process."[30]

In a subsequent case, Press-Enterprise challenged the exclusion of the public from a preliminary hearing in a murder trial.[31] In that case, the Supreme Court applied the same historical analysis and held that preliminary hearings in criminal trials are presump-

24. *Id.* at 610.
25. *Id.* at 603-06.
26. *Id.*
27. *Id.* at 607.
28. 464 U.S. 501.
29. *Id.* at 508 (citing *Richmond Newspapers, Inc.*, 448 U.S. at 569-71).
30. *Id.* at 512.
31. Press-Enterprise v. Superior Court, 478 U.S. 1 (1986).

tively open to the public.[32] The Court rearticulated that in order to close a judicial proceeding, the state must demonstrate an overriding interest in closure, and closure must be essential to preserve higher values and narrowly tailored to serve that interest.[33] Closure would only be allowed if "specific findings are made demonstrating that first, there is a substantial probability that the defendant's right to a fair trial will be prejudiced by publicity that closure would prevent and second, reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights."[34]

Nevertheless, despite the public policy considerations in favor of openness, the Supreme Court has found that an individual's right to privacy can outweigh the public right of access.[35] In *United States Department of Justice v. Reporters Committee for Freedom of the Press*, the Court held that disclosure of an F.B.I. rap sheet to a third party could reasonably constitute an unwarranted invasion of the individual's privacy.[36] This was true even when the data contained within the rap sheet was readily available to the public from the agencies that collected the information. The Court balanced defendant's privacy interests against the presumption of public access and found that in this circumstance, privacy prevailed.[37] This was not a situation where the public interest in access was supported by the right to be informed of the government's actions.[38] In other words, just because the rap sheet was not wholly private, does not mean an individual will not have an interest in limiting its disclosure. As such, it was not a request that would be supported by the Freedom of Information Act ("FOIA").[39]

Judge Starr, in his dissenting opinion in *Reporter's Committee* in the D.C. Court of Appeals, offered an intriguing analysis that was

32. *Id.* at 13.

33. *Id.* at 14.

34. *Id.*

35. *See generally* FRANKLIN, MASS MEDIA LAW 727-28 (6th ed. 2000); *see also Reporters Comm.*, 489 U.S. 749.

36. 489 U.S. 749.

37. *Id.*

38. *Id.*

39. 5 U.S.C. § 552 (a)(1)(c) (2002) (commonly known as the Freedom of Information Act ("FOIA")). This law was the basis under which disclosure was sought.

later embraced by the Supreme Court.[40] He believed that compiled data might create a privacy interest where specific information is considered public.

> As I see it, computerized data banks of the sort involved here present issues considerably more difficult than, and certainly very different from, a case involving the source records themselves. This conclusion is buttressed by what I now know to be the host of state laws requiring that cumulative, indexed criminal history information be kept confidential, as well as by general Congressional indications of concern about the privacy implications of computerized data banks.[41]

The Supreme Court noted Judge Starr's concerns about turning the Federal Government into a "clearinghouse for personal information that had been collected about millions of persons under a variety of different situations."[42] Quoting Judge Starr, the Court wrote:

> We are now informed that many federal agencies collect items of information on individuals that are ostensibly matters of public record. For example, Veterans Administration and Social Security records include birth certificates, marriage licenses, and divorce decrees (which may recite findings of fault); the Department of Housing and Urban Development maintains data on millions of home mortgages that are presumably "public records" at county clerks' offices . . . . Under the majority's approach, in the absence of state confidentiality laws, there would appear to be a virtual per se rule requiring all such information to be released. The federal government is thereby transformed in one fell swoop into the clearinghouse for highly personal information, releasing records on any person, to any requester, for any purpose. This Congress did not intend.[43]

40. *Reporters Comm.*, 489 U.S. at 760 (citing 831 F.2d 1124, 1128-30 (D.C. Cir. 1987) (Starr, J. dissenting)).

41. *Reporters Comm.*, 831 F.2d at 1128.

42. *Reporters Comm.*, 489 U.S. at 761.

43. *Id.* (quoting 831 F.2d at 1130).

The Supreme Court concluded that even if an event is not wholly private, an individual may still have a privacy interest attached to it, noting that the "practical obscurity" of rap-sheet information should be protected, especially when the information is not sought for official government inspection, but rather, for private use.[44] It is important to note that this case dealt with access to government records under FOIA, which can be distinguished from instances where access to judiciary is at issue. In those instances, open trials are a part of common law tradition, and the right to a public trial does not give the accused the right to a private trial.[45]

B. The Presumption of Openness in New York Courts

Like the U.S. Constitution, New York's Constitution does not expressly provide a right of access to court proceedings or records.[46] Like the U.S. Supreme Court, however, New York courts have concluded that there is a common law presumption of access to court proceedings and documents.[47] New York courts interpret this right broadly in order to keep information about the governmental decision making process widely available to the public.[48] This principle is expressly supported by New York's Freedom of In-

44. *Id.* at 780.

45. *See* Gannet Co. v. Depasquale, 443 U.S. 368, 382 (1979) (holding that "(w)hile the Sixth Amendment guarantees the accused a right to a public trial, it does not give a right to a private trial"). *See also Richmond Newspapers*, 448 U.S. at 573 (holding that a "presumption of openness inheres in the very nature of a criminal trial under our system of justice"). For further discussion of access under FOIA, see Martin E. Halstuk, *Blurred Vision: How Supreme Court FOIA Opinions on Invasion of Privacy Have Missed the Target of Legislative Intent*, 4 COMM. L. & POL'Y 111 (1999) (discussing how Supreme Court rulings broadly interpreting privacy exceptions have limited access to information that could advance the public interest in various areas). Arguably, limiting FOIA requests in such a way undermines the policy considerations leading to the enactment of such a law. Moreover, there is no historical tradition of access to government documents sought under FOIA.

46. U.S. CONST. amend. I; N.Y. CONST. art I, § 8.

47. *See* Oneonta Star Division of Ottaway Newspapers, Inc. v. Mogavero, 77 A.D.2d 376 (3d Dep't 1980); *see also* Westchester Rockland Newspapers v. Leggett, 48 N.Y.2d 430 (1979) (stating the many purposes that openness offers in the context of a criminal case such insuring justice for the accused).

48. *See In re* Conservatorship of Ethel Brownstone, 191 A.D.2d 167 (1st Dep't 1993) (holding that "the [s]tatutory and common law of this state have long recognized that civil actions and proceedings should be open to the public in order to ensure that they are conducted efficiently, honestly, and fairly").

formation Law which has the purpose of encouraging accessibility of government documents to the public and calls the right to review documents leading to government decisions as one "basic to our society."[49]

Although openness is favored, the right is not absolute.[50] Courts may use discretion in determining the definition of what is public.[51] When assertion of the right to inspect would jeopardize the fairness of a trial, as well as in other situations where the need to seal a document outweighs the public interest in granting access, courts have the right to seal those documents for "good cause."[52] This is a vague standard, and the rules give no real articulation as to what constitutes "good cause."[53]

49. N.Y. Pub. Off. Law § 84 (Mckinney 2003).

50. *See* Gannett Co., Inc. v. Weidman, 424 N.Y.S.2d 972 (1980) (holding that access to all court proceedings is not a right guaranteed to the public and press); *see also* George F. Carpinello, *Public Access To Court Records in Civil Proceedings: The New York Approach*, 54 ALB. L. REV. 93 (1989); *see also* section 4 of the Judiciary Law which grants the court discretion to exclude the public in certain classes of cases, like divorce, seduction, abortion, rape, etc.

51. *See In re* Dorothy D, 49 N.Y.2d 212 (1980) (holding that "the inherent power of courts to control the records of their own proceedings has long been recognized in New York . . . [however] this power does not depend on statutory grant but exists independently and 'inheres in the very constitution of the court'. . ."; *see also* Carpinello, *Public Access To Court Records in Civil Proceedings: The New York Approach*, 54 ALB. L. REV. 93 (1989). Cases can also be sealed by court order pursuant to the provisions of 216.1 of the Uniform Rules for the New York State Trial Courts upon a written finding of good cause. N.Y. Uniform Rules of Trial Court § 216.1(a) (McKinney 2003).

52. N.Y. Uniform Rules of Trial Court § 216.1(a) (McKinney 2003).

53. *Id.* (stating in determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties). *See also* Coopersmith v. Gold, 594 N.Y.S.2d 521, 530 (N.Y. Sup. Ct. Rockland County 1992) (holding although the rule does not further define "good cause," a standard that is "difficult to define in absolute terms," a sealing order should rest on a "sound basis or legitimate need to take judicial action"). *See, e.g.,* Danco Laboratories, Ltd. v. Chemical Works of Gedeon Richter, Ltd., 274 A.D.2d 1 (1st Dep't 2000) (newspaper challenged a sealing order in litigation involving the abortion pill RU-486). The New York Court of Appeals upheld the appellate division's decision to unseal the documents and redact sensitive information. It held that when issues of major public importance were involved, the interests of the public and press in access to court records weighed heavily in favor of release. *Id.*

II. Recent Federal Legislation Adopted by New York Limits Access to Documents Posted on the Internet

Despite the clear presumption in favor of access to courts and judicial records, following the lead of the federal Judicial Conference Committee, New York State has adopted a number of restrictions that limit the availability of information contained in court records to the public over the Internet.

A. The Federal Legislation

In 1990, the judiciary was instructed by Congress to start providing public access to information available in electronic form.[54] Today, records are available on a court by court basis through a service of the United States Judiciary called Public Access to Court Electronic Records ("PACER").[55] It allows users to obtain case and docket information from federal appellate, district, and bankruptcy courts.[56] PACER offers electronic access to case file documents, listings of all case parties, reports of case-related information, and chronologies of events entered in the case record, claims registries, and listings of new bankruptcy cases.[57] Anyone can register with PACER to search and download the public court documents available in the database.[58] The costs are roughly the same as visiting the courthouse to physically copy the documents.[59]

54. *Public Access to Court Documents: Better, Faster . . . and Cheaper Than Ever Before, available at* http://www.uscourts.gov/ttb/april01ttb/ctdoc.html (last visited Aug. 1, 2004).

55. *Administrative Office of the US Courts, PACER Service Center, at* http://pacer.psc.uscourts.gov/pubaccess.html (last visited Feb. 2, 2005) (the PACER service is run by the Administrative Office of the United States Courts). *See also About CM/ECF, Case Management/Electronic Case Files (CM/ECF), at* http://www.uscourts.gov/cmecf/cmecf_about.html (last modified Jan. 2005). Case Management/Electronic Case Files ("CM/ECF") systems are now in use in 25 district courts, 60 bankruptcy courts, the Court of International Trade, and the Court of Federal Claims.

56. State and Federal Policy on Electronic Access to Court Records, *available at* http://www.courts.state.md.us/access/states7-5-01.pdf (last visited Aug. 1, 2004).

57. *See Service Center Ensures PACER Reliability During "Unbelievable" Growth in Public's Use, available at* http://www.uscourts.gov/newsroom/pacer.htm (last visited Aug. 1, 2004).

58. *Id.*

59. *Public Access to Court Documents: Better, Faster . . . and Cheaper Than Ever Before, available at* http://www.uscourts.gov/ttb/april01ttb/ctdoc.html (last visited Aug. 1, 2004) (stating the cost is around 7¢ per page).

Because the court documents are available electronically, it is as if the clerk's office is open twenty-four hours a day. For individuals as well as the media, it is a fast and economical way to track federal cases.

Because of competing privacy and security interests, however, the Judicial Conference Committee on Court Administration and Case Management adopted a set of guidelines for posting court information on the Internet.[60] The guidelines require redaction of sensitive information such as social security numbers and personal identifiers in civil and bankruptcy cases.[61] Also required is the full restriction of remote electronic access to documents in criminal cases.[62] This part of the policy will be revisited in a few years.

B. The New York Legislation

In April 2002, Chief Judge Judith Kaye announced the formation of a commission to determine whether New York public court documents should be posted on the Internet.[63] Specifically, the commission was charged with the task of examining the competing interests of privacy and open access relating to the information available in court case files.[64] Recently the committee announced its recommendation to the court that criminal and civil legal records should be made available on the Internet to be phased in over the next five years.[65] While it intends to make public court records comprehensible to a wide public, the commission did not advocate total disclosure of all public records, but proposed some limitations on personal private information including records generally sealed at the courthouse.[66] Certain personal identifiers such

60. REPORT ON PRIVACY AND PUBLIC ACCESS TO ELECTRONIC CASE FILES (2001), *available at* http://www.uscourts.gov/Press_Releases/att81501.pdf (last modified June 26, 2001).

61. *Id.*

62. *Id.*

63. Press Release, Commission to Examine Future of Court Documents on the Internet, Apr. 24, 2002, *available at* http://www.nycourts.gov/press/pr2002_07.shtml. (on file with the *New York Law School Law Review*).

64. *Id.*

65. Susan Saulny, *Court Records a Click Away? Yes, With Some Safeguards*, N.Y. TIMES, Feb. 26, 2004, at B4.

66. *Id. See also* THE REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK COMM'N ON PUB. ACCESS TO COURT RECORDS, THE REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK (2004), *available at* http://www.courts.state.ny.us/ip/publicaccess/

as Social Security numbers, financial account numbers, names of minor children and full birth dates of any individual will be shortened when referenced in court filings.[67] As in the federal system, the responsibility for ensuring compliance with the restrictions on filing will be placed with attorneys.[68] To ensure consistency, the committee has advocated redacting this information from records maintained at the courthouse as well as on the Internet.[69]

Unfortunately, under both state and federal legislation, it appears that what is "public" for purposes of access is being defined by the mode of access.[70] The approaches of both the federal and current New York State legislation is, at best, to reassess the notion of what is public based on the mode of access and, at worst, to treat information differently because it is suddenly exposed from the "practical obscurity" of the courthouse. Either way, the limitations placed on access are dangerous to the principles rooted in common law and the history and text of the First Amendment.[71]

Report_PublicAccess_CourtRecords.pdf [Hereinafter "COMM'N ON PUB. ACCESS TO COURT RECORDS"].

67. COMM'N ON PUB. ACCESS TO COURT RECORDS, *supra* note 66, at 7.

68. *Id.* MARTHA WADE STEKETEE & ALAN CARLSON, STATE JUDICIAL INSTITUTE, DEVELOPING CCJ/COSCA GUIDELINES FOR PUBLIC ACCESS TO COURT RECORDS: A NATIONAL PROJECT TO ASSIST STATE COURTS 64-70 (2002), *available at* http://www.courtaccess.org/modelpolicy/19Oct2002FinalReport.pdf (outlining the court's role and objective in educating litigants about online access and personal identifiers).

69. COMM'N ON PUB. ACCESS TO COURT RECORDS, *supra* note 66.

70. *Cf.* Jack M. Balkin, *Digital Speech and Democratic Culture: A Thoery of Freedom of Expression for the Information Society*, 79 N.Y.U. L. REV. 1, 6 (2004).

> The digital age provides a technological infrastructure that greatly expands the possibilities for individual participation in the growth and spread of culture and thus greatly expands the possibilities for the realization of a truly democratic culture. But the same technologies also can produce new methods of control that can limit democratic cultural participation. Therefore, free speech values - interactivity, mass participation, and the ability to modify and transform culture - must be protected through technological design and through administrative and legislative regulation of technology, as well as through the more traditional method of judicial creation and recognition of constitutional rights.

Id.

71. *See* Comment from the Reporters Committee for Freedom of the Press et al., to the Federal Judicial Conference (Jan. 26, 2001) (arguing in response to a request for comments on privacy and public access to electronic case files that some of the proposed policies would limit access to records that are in the public interest and could violate the First Amendment). Courts have held that records of all types should be available to the public so that the public may monitor how the court officials perform

Although the New York Commission on Public Access made a step in the right direction by proposing that court records be made generally available over the Internet, its decision to advocate withholding some of that information because of the number of people who can access the information on the Internet seems to conflict with the policy that underpins free access to judicial records. The Commission's approach is to strike the balance between access and privacy by making broad determinations in advance to redact certain types of information so that the information will no longer be available to the public either at the courthouse or on the Internet.[72] This solution does not seem tailored to intrude as little as possible on the right of access to judicial records and pays too little attention to the real possibility that parties in individual cases will seal records from public view. It would be difficult in advance to envision all the harms that might come from access to Social Security numbers or birth dates, as it would be difficult to envision all the needs of the media and the public for this information. Because the decision to restrict public access to entire categories of information is a serious one, and involves a form of pre-emptive action prior to any actual injury, it would seem that courts should weigh these interests, at least with respect to such information as Social Security numbers or birth dates, prior to restricting access to them. Because redacting previously public information is a serious step, with potentially unforeseeable consequences for the public interest, it should only be taken where the potential injuries cannot be adequately redressed after they occur. Courts and scholars have tried to mark the limits of First Amendment protection in a number of areas but with little consensus about how to approach speech that is potentially harmful.[73] Currently, the general approach of the New York Commis-

their duties. *See, e.g., In re* T.R., 556 N.E.2d 439, 453 (Ohio 1990) ("Since Judge Solove is an elected official, the public has a right to observe and evaluate his performance in office").

72. COMM'N ON PUB. ACCESS TO COURT RECORDS, *supra* note 66.

73. *Compare* NADINE STROSSEN, DEFENDING PORNOGRAPHY; FREE SPEECH, SEX, AND THE FIGHT FOR WOMEN'S RIGHTS (1995) *with* NICHOLAS WOLFSON, HATE SPEECH, SEX SPEECH, FREE SPEECH 103-04 (1997) ("Many religious conservatives and also many feminists believe they can both define and justifiably condemn pornography. Their reasons often differ, but they agree that pornography lacks intellectual or aesthetic merit, or inflicts hurt to a level that demands abrogation of First Amendment protection for pornographic speech. Their ideological opponents argue that what some would decry as

sion on Public Access is to see personal information put into the court record as potentially harmful rather than something of public interest.[74] This is not necessarily the right approach. Rather than balancing privacy interests against the First Amendment right of access and redefining what should be considered public for access purposes, those deciding issues of access should start from the position that the records should be available unless, "in a particular instance with regard to particular information in a particular record, a person can prove that there is a compelling interest requiring secrecy and that secrecy is the least restrictive means of achieving that interest."[75] This is the standard generally used for restricting harmful speech and should be applied to court access as well.[76]

On the Internet, more speech rather than less ought to be the rule.[77] This includes potentially repugnant speech — speech that

harmful 'porn' is occasionally great art, or at least may be a positive contribution to sexual freedom and liberation.") *with* Cass Sunstien, *Pornography and the First Amendment*, 1986 DUKE L.J. 589, 627 (arguing that "skepticism about antipornography legislation is based on a simultaneous undervaluation of the harm pornography produces, a misapplication of conventional doctrines requiring viewpoint-neutrality, and — perhaps most important — an overvaluation of the dangers posed by generating a somewhat different category of regulable speech bound to have some definitional vagueness").

74. *See* Reporters Comm. for Freedom of the Press's Response to Model Guidelines for Access to Court Records on the Internet, *at* http://rcfp.org/courtaccess/objections.html (last visited Sept. 1, 2004) (arguing that "[t]he general balancing tests should not be used, as they ignore the constitutionally required presumption of openness and replace it with an arbitrary and vague "harm" standard").

75. *Id.* (arguing that "the standard is high and records should not be cut off from public access based on mere allegation of "privacy," "embarrassment" or some other vague assertion of potential harm). *See also* United States v. McVeigh, 119 F.3d 806 (10th Cir. 1997).

76. *See* Brandenburg v. Ohio, 395 U.S. 444, 448 (1969) (in vindicating the Ku Klux Klan's right to express hatred and violence toward Jews and blacks, the Court held that unless the Klan's speech is likely to incite imminent lawless action, our Constitution has made such speech immune from governmental control).

77. Commentators have argued that the solution to racist speech, for example, is more speech. "Because racism is a form of ignorance, dispelling it through reasoned argument is the only way to get at its root. Moreover, talking back to the aggressor is empowering. It strengthens one's own identity, reduces victimization, and instills pride in one's heritage." RICHARD DELGADO & JEAN STEFANCIC, MUST WE DEFEND NAZIS? HATE SPEECH, PORNOGRAPHY, AND THE NEW FIRST AMENDMENT 99 (1997).

More speech is the cure for bad speech, governmental censorship and self-aggrandizement are evils always to be feared and avoided. Specifically, the First Amendment absolutists take the position that hate speech, pornography and other regulated forms of expression ought to be protected precisely because they are unpopular. "The speech we hate . . . must be protected in order to safeguard that which we hold dear. The only

some may feel invades a privacy right or has potential for harm, just like hate speech and pornography.[78] Protection for unpopular speech ensures the right to protect valued speech.[79]

Additionally, the information contained in public court records is not in and of itself harmful, nor does it incite harm. There is the possibility that personal information might be taken from court records and used in identity theft, but this is not a sufficient reason to keep information out of the public record. Traditionally, before the government may restrict expression, it must show that there is imminent harm as a result.[80] Posting personal information such as Social Security numbers as part of the court record is not harmful *per se*, the harm comes from how the information is used. Remedies should be available to redress such harm, but the suppression of this previously public information by way of mechanical redaction of broad categories of information seems too significant an intrusion on the rights of the public.

Opponents of full internet access express concern that courts may begin to conceal other information in court records that would ordinarily be considered public.[81] Nevertheless, when a litigant

way to assure protection of values that lie at the core of the First Amendment is to protect speech lying at its periphery." *Id.* at 150-51.

78. *Id. See also* Nadine Strossen, *A Feminist Critique of "The" Feminist Critique of of Pornography*, 79 VA. L. REV. 1099, 1167-71 (1993) (opposing anti-pornography rules in the interests of women). "[F]reedom for sexually explicit expression [is an] essential aspect of human freedom; denying [it] . . . undermines human rights more broadly." *Id.* at 1171.

79. "Without protection for the speech we hate, the free marketplace of ideas will collapse; in order to protect speech that our society finds acceptable we must also protect speech we find repugnant." This includes valueless forms including hate speech and pornography. Delgado & Stefancic, *supra* note 77, at 153. *See also* Marjorie Heins, *Banning Words: A Comment on "Words That Wound,"* 18 HARV. C.R.-C.L. L. REV. 585, 592 n.39 (1983) ("Tolerating ugly, vicious speech is a small but necessary price to pay for the freedom to advocate social change and justice.").

80. Nadine Strossen, *Hate Speech and Pornography: Do We Have to Choose Between Freedom of Speech and Equality?*, 46 CASE W. RES. 449, 458 (1996) (arguing that "before the government may restrict expression, it must show not only that the expression threatens imminent serious harm, but also that the restriction is necessary to avert the harm").

81. *See* Comment from the Reporters Committee for Freedom of the Press et al., *supra* note 71; *see also* Nellson v. Bayly, 856 A.2d 566 (D.C. Cir. 2004), citing Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 14-15 (1986) which reiterates the First Amendment right of access to judicial proceedings). In response to allegations by a public defender that judges on the Superior Court in Washington, D.C., routinely seal entire cases, the District of Columbia Court of Appeals held that "to justify closure of a

places personal information about herself in the public record, she has no expectation of privacy in such information.[82] Courts may enter protective or sealing orders where there is more than a potential for harm, as in cases of domestic violence discussed above. It should be left to the discretion of attorneys and judges to inform litigants of their options rather than relying on a paternalistic set of standards that opens the door to blanket redaction.[83] Even in light of legitimate privacy concerns for litigants, what is public should not be determined by the number of people who are capable of viewing it. Finally, from an ideological standpoint, censoring court documents is diversionary; it makes it easier to avoid confronting the less convenient questions surrounding issues of privacy and the Internet as a whole.

From a practical perspective, the mechanical redaction of personal information like Social Security numbers or birth dates may offer only illusory protections against harmful use. It is a flawed assumption that redaction of personal information in court records would effectively keep that information from those who may use it improperly. Indeed, personal information is available on the Internet to anyone willing to pay the cost.[84]

Opponents also incorrectly assume there is no reason why the media would need Social Security numbers or birth dates as personal identifiers. In a situation where someone with a common name is involved in a case of public interest, for example, having

protected judicial proceeding, the trial court must find that closure serves a compelling interest" and that a proceeding may not be closed unless there is a "substantial probability" of harm from leaving it open to the public).

82. Reporters Committee for Freedom of the Press's Response, *supra* note 74.

83. Commission on Public Access to Court Records, Buffalo Hearing (June 12, 2003), *available at* http://www.courts.state.ny.us/ip/publicaccess/buffalo/buffalohearing.shtml. Lucy Dalglish, Executive Director of the Reporters Committee for Freedom of the Press, Remarks at the Buffalo Hearing of the Commission on Public Access to Court Records (June 12, 2003) (expressing her organization's belief that it is the responsibility of the judiciary and legal professionals to advise litigants of sealing orders), *available at* http://www.courts.state.ny.us/ip/publicaccess/buffalo/buffalohearing.shtml.

84. There are a number of commercial websites that already have the information available at the courthouse such as http://www.criminalsupersearch.com or http://find.intelius.com.

access to a birth date or Social Security number would ensure that the media correctly identifies that person.[85]

Also misguided is the assumption that private information in the media's hands would be abused. Media organizations often have access to information from judicial proceedings that they choose not to print or broadcast. One example is the name of alleged rape victims.[86] Arguably, it would be unconstitutional for a court to place a gag order on the media to keep them from identifying an alleged victim (who may be identified in an open court) and yet, typically, the media choose to protect that person's privacy.[87]

III. The Presumptive Right of Access to Court Records Should Not Shift Depending on the Type of Medium Involved

The First Amendment right of access to court documents available at the courthouse should also apply to court documents made available on the Internet. Court records should be fully available on the Internet just as they are in the courthouse without making uniform changes to currently public information. If there is the possibility that the information available on the Internet is somehow dangerous, then laws of general applicability should be applied to those who use the information for "improper purposes."[88] There should, however, be no general privacy right attached to information that would be merely embarrassing if made public.[89] If information is used to commit fraud (such as a Social Security number stolen from a court record that is available on the Internet),

85. Dalglish, *supra* note 83 (discussing her experience where local news organizations identified the wrong person in their reports because they had limited information about his identity).

86. Adam Liptak, *Privacy Rights, Fair Trials, Celebrities and the Press*, N.Y. Times, July 23, 2004, at A20. *See also* Cox Broad. Corp. v. Cohn, 420 U.S. 469 (1975) (striking down as violative of the First Amendment a state law that prohibited publication by the press of the names of rape victims revealed in open court).

87. Kathleen Parker, *Publishing Rape Victims' Names Adds Insult to Injury*, Orlando Sent. Trib., Feb. 26, 2003, at A19.

88. Nixon v. Warner Communications, 435 U.S. 589, 598 (1978).

89. *See* Comment from the Reporters Committee for Freedom of the Press et al., *supra* note 71.

then laws of general applicability should apply.[90] To cut off the flow of information at the source erodes the generally accepted notion of access. The First Amendment right of access to the judiciary is meant to protect the public interest in government activity; it should not be the place to create or protect privacy rights.

Common law and literal understandings of privacy encompass the individual's right to control information concerning his or her person.[91] Recognition of this right supports the distinction between bits of information held in "practical obscurity" and the wide dissemination of personal information available in fully text searchable forms on the Internet.[92] But is a privacy right threatened when a compilation of otherwise hard to find information — what is now available in the courthouse — is disclosed on the Internet? This argument is at the heart of Judge Starr's argument in *Reporters Committee*.[93] The reasoning used by the Supreme Court in that case presumed a harmful act would surely follow the grant of access to certain personal information and thus created a privacy right where one did not exist.[94] But it does not follow that access to information alone is necessarily harmful.

Perhaps the better question to ask, however, is whether making court documents available online changes them in some way that challenges our notions of what should be considered public. The *Nixon* Court suggested that it would make public records too readily a vehicle for the improper purposes.[95] Such improper purposes include the possibility that records will be used to gratify private spite

90. Personal Information Privacy Act of 2003, H.R. 1931, 108th Cong. (2003). The Personal Information Privacy Act is proposed federal legislation that prohibits selling personal information or using Social Security numbers without permission.

91. *See generally* Paige Norian, *The Struggle to Keep Personal Data Personal: Attempts to Reform Online Privacy and How Congress Should Respond*, 52 CATH. U.L. REV. 803 (2003) (discussing privacy on the Internet).

92. *Id.*

93. *Reporters Comm.*, 831 F.2d at 1128-30. Judge Starr had great reservations about the Federal Government turning into a "clearinghouse for highly personal information . . . ." *Id.* at 1130.

94. *Id.*

95. *Nixon*, 435 U.S. 589, 598.

or promote public scandal.[96] Opponents may also argue that Internet access would allow the general public to go spelunking through court records to find out about the criminal and civil proceedings of their relatives, friends, and acquaintances.[97] If information brokers are given access to court records over the Internet, the argument goes, they will take that information along with personal information from other available sources and sell dossiers for a price over the Internet.[98] The only value of this information in its compiled form would be to gratify an individual's improper interest.[99] If the only benefit to making public court records available over the Internet is to gratify private spite or idle curiosity, or encourage identity theft, what purpose would it serve?

These arguments are taken up in the following sections.

A. The Danger of Compiled Information

One might argue that compiled information available on the Internet is somehow different from single bits of information hidden in the practical obscurity of the courthouse.[100] This theory was advanced by the *Nixon* Court. This reasoning however, presumes an improper purpose and fails to consider that there really is nothing harmful in having the information itself. There is only an injury when the information is used in some harmful way.

There is a fear that information brokers will harvest public court data once it is available on the Internet and compile informa-

96. *Federal Judges, Agencies Block Online Access to Public Records, Associated Press*, Oct. 12, 2001. In this article, Charles Davis, head of the Freedom of Information Center at the University of Missouri-Columbia stated that there is a fear that "electronic information is more dangerous than paper information." *Id.*

97. *See* Submission of the Office of the New York State Attorney General to the Commission On Public Access to Court Records (May 30, 2003), *available at* http://www.courts.state.ny.us/ip/publicaccess/nyc/kdreifach_nysattorneyGen.pdf.

98. *Id.* The testimony of Kenneth Dreifach, Chief of the Internet Bureau Office of the Attorney General, expressed the fear that information brokers already harvest social security numbers and other personal information to sell for a price on the internet. If this information is made readily available through court documents on the internet, instances of identity theft may increase.

99. *Id.*

100. Yochai Benkler, *Constitutional Bounds of Database Protection: The Role of Judicial Review in the Creation and Definition of Private Rights in Information*, 15 BERKELEY TECH. L.J. 535, 587-600 (2000) (suggesting there is a conflict between free speech rights and database protection); James Weinstein, *Database Protection and the First Amendment*, 28 DAYTON L. REV. 305 (2002).

tion about individuals.[101] These personal dossiers could then be sold either to curious individuals or to marketing organizations that would in turn use the information for solicitation.[102] Spammers and telemarketers have already taken advantage of lists of compiled information in order to more effectively solicit the general public.[103] Courthouses have probably already been used for this purpose.[104] This information is, after all, part of the public court record. Thus, Internet access to court records would only shorten the process to getting personal information that is already available through other means. Moreover, it could be argued that there is no injury in a situation like this necessitating privacy protections; it is not necessarily an invasion of privacy to sell a list of compiled information.[105]

B. The Chilling Effect

There is also the fear that people will stop using the court for legal relief if they know that personal information will be available through their court filings.[106] Instead of creating a more efficient and accessible judiciary, it will make the courts a less attractive means of dispute resolution.[107] This prediction is made generally about potential litigants but more specifically in connection with

101. *See* Submission of the Office of the New York State Attorney General, *supra* note 97.

102. *See, e.g.,* U.S. Search, *available at* http://www.ussearch.com/wlcs/index.jsp (last visited Aug. 1, 2004).

103. Submission of the Office of the New York State Attorney General, *supra* note 97.

104. Organizations like U.S. Search that already compiles information may have already done this with real estate records. This company has a database of land owners across the country. An obvious place to gather that information is at local courthouses, *available at* http://www.ussearch.com (last visited Aug. 1, 2004).

105. Shibley v. Time, Inc., 45 Ohio App. 2d 69 (1978) (holding that the selling of the lists did not constitute an invasion of privacy as that right did not extend to the mailbox). *See also* Stan Karas, *Privacy, Identity, Databases*, 52 AM. U.L. REV. 393, 402 (2002). In sum, more information is collected on more Americans then ever before. The records of what we buy are collected, aggregated, and then used by marketers to induce us to buy something else. Personal consumption is becoming a quasi-public activity.

106. *See, e.g.*, Transcript of the New York City Hearing of the Commission on Public Access to Court Records (May 30, 2003), *available at* http://www.courts.state.ny.us/ip/publicaccess/nyc/nychearing.shtml (last visited Aug. 1, 2004).

107. *Id.*

victims of domestic violence and stalking.[108] The theory is that access to private information may subject victims to abusers they hope to elude.[109] Domestic violence experts believe batterers and stalkers are obsessed with monitoring or controlling their victims; they often spend countless hours trying to track them down using any available means.[110] If personal information in court files is available on the Internet, information might be used to find and terrorize victims who have managed to escape their abusers.[111]

Like the idea that possession of compiled information is somehow dangerous, this scenario presupposes nefarious use of public information. Uniform redaction is over inclusive and will suppress public information where there is no such concern. In extreme situations, the courts should be responsible for advising litigants that their filings, and the personal information contained within them, are generally public and the court may then take steps to seal that information.[112]

Moreover, the ability to access personal information in court documents available on the Internet could become an empowering tool for victims. Victims could investigate the people they choose to let into their lives. They could find out about prior litigation or if prospective partners have ever been married.[113]

C. Acts of Spite

The fear exists that litigants will put sensitive, scurrilous or embarrassing information into court pleadings to embarrass opposing

108. Organizations like the New York State Office for the Prevention of Domestic Violence and Sanctuary for Families Center for Battered Women's Legal Services are opposed to posting public court documents on the internet. Both had representatives testify at the New York City Hearing of the Commission on Public Access to Court Records. Transcript, *supra* note 106.

109. *See id.*

110. *Id.*

111. *Id.*

112. STEKETEE & CARLSON, *supra* note 68. *See also* COMM'N ON PUB. ACCESS TO COURT RECORDS, *supra* note 66.

113. *See generally* Transcript, *supra* note 106, at 91. In a conversation between Floyd Abrams, Commission Chair and Charlotte Watson, Executive Director of the New York State Office for the Prevention of Domestic Violence, they discussed the possibility that victims of domestic violence could utilize available information on the internet to investigate potential abusers. *Id.* at 92.

litigants out of private spite.[114] For example, in a vicious litigation, one adversary may include financial information about her opponent that has little relevance to the dispute but would be publicly embarrassing when posted on the internet as a part of the public court record. Another example is a dispute involving trade secrets or other sensitive information. If trade secrets were to be posted on the Internet as part of a public court filing, the company would risk a financial harm.[115]

Again, the current solutions to keep this type of information from reaching public view would serve just as well when applied to the Internet.[116] Trade secrets as well as sensitive financial information could be redacted or sealed before it becomes part of a public court record. It is important to note that if an adversary truly wanted to divulge information to the public on the Internet, the far easier solution is to simply post it on a web page and not go through the process of including it in a pleading.

D. Selective Access

The Internet is decidedly different from the courthouse with respect to the amount of time it takes to circulate records. When a record becomes public in the courthouse it is available to the first person to request it; on the Internet the record is instantly available to everyone online. In effect, once posted on the Internet, the records will certainly be seen, copied and then virtually impossible to conceal; whereas in the courthouse, if a public document were to be sealed, the clerk simply marks the record sealed and will not hand it over to anyone who wishes to see it. It is the difference between the possibility that only a few people have had access and

114. *Id.*

115. *In re* Crain Communications v. Hughes, 135 A.D.2d 351, *aff'd*, 74 N.Y.2d 626, *reh'g denied,* 74 N.Y.2d 843 (N.Y. App. Div. 1987) The publisher of a newspaper that reported on news of interest to the insurance industry sought to compel unsealing of the court record in a case for judicial dissolution of the corporation. The court concluded that prejudice to the settling parties, which would ensue from disclosure of trade secret information.

116. SUBCOMM. ON OTHER STATES AND FEDERAL COURTS, COMM. ON ACCESS TO COURT RECORDS, STATE AND FEDERAL POLICY ON ELECTRONIC ACCESS TO COURT RECORDS, *available at* http://www.courts.state.md.us/access/states7-5-01.pdf (last visited Aug. 1, 2004).

the probability that it was seen while posted, copied, and regenerated on other websites.

It has been suggested that because the information included in pleadings may be considered public court documents before an opponent has an opportunity to move to seal, there should be some lag time before a public court document is posted on the Internet.[117] There are several reasons, however, why a delay before posting public court records containing personal information on the Internet should not be permitted. First, if there is a First Amendment right of access to both modes of access (i.e., courthouse and Internet) one should not have time priority over another. If the public and media are waiting for a particular court decision and it is available in the courthouse for some time before it is accessible on the Internet, only those with ready access to the courthouse will have the privilege of taking the first look.[118]

Second, courts already routinely seal and redact sensitive information at the request of litigants. "The courts are experienced in balancing the interests [of privacy and access] on a case by case basis and there is no reason they should not continue to do so with electronic records."[119]

Finally, courts differ in what portion of a record should be made public and at what point in time the First Amendment right attaches to the inspection of public court records.[120] Some courts

117. *See* Transcript, *supra* note 106, at 40. Commissioner Thomas Gleason asked several witnesses to explain if New York had a particular time of attachment for a First Amendment right of access. In the Commissions findings Commissioner Gleeson wrote a minority report suggesting that a period of evaluation time would be appropriate before documents reached the Internet. COMM'N ON PUB. ACCESS TO COURT RECORDS, *supra* note 66.

118. There is a difference between a decision and court filings because a decision will only contain personal information that is important to the decision whereas filings and proceedings will contain much more information. The idea here however, is the same. If a record (regardless of whether it is a decision, filing or transcript of a proceeding) becomes public at the courthouse before it is available on the Internet, only those with the means to go to the courthouse will have the first opportunity to inspect them.

119. *See* Transcript, *supra* note 106, at 41.

120. United States v. Amodeo, 44 F.3d 141 (2d Cir. 1995) (holding that "the mere filing of a paper or document with the court is insufficient to render that paper a judicial document subject to the right of public access").

only make opinions public while others consider the entire docket (pleadings and orders) part of the public record.[121]

New York courts have determined that the right of access does not attach unless the document pertains to a potential judicial function for which it has a potential to be useful.[122] For example, the right would attach to portions of a brief used by the court in reaching an opinion. New York courts also follow a common law presumption that the public should have access to all documents filed with the court at the time of filing, i.e., no lag time.[123] Thus, there is no principled basis on which to withhold personal information available in court documents prior to posting on the Internet if the information has already been made available in the public file.

IV. Conclusion

The First Amendment right to inspect court documents should be extended from the courthouse onto the Internet regardless of the information contained within those documents. While posing a relatively small threat to personal privacy or security, open access to electronic records would promote an important public good, increase the free flow of knowledge, and engender healthy political debate. Preemptive sealing or reduction of all personal information contained within those records goes too far, and threatens the First Amendment right of access.

The determinations made by the New York Commission on Public Access were largely positive in advancing the public interest in a free and open judiciary. Nevertheless, the limitations are too broad and conflict with the policy of presumed access. The better approach is to interfere as little as possible with the right of access and allow parties in individual cases to seal records from public view, subject to judicial oversight and existing law. This would obviate the need to protect against hypothetical harms and make preemptive action prior to any actual injury.

121. *Id.*

122. People v. Sullivan, 640 N.Y.S.2d 714 (Saratoga County 1996).

123. *Id.* (the holding in this case indicates that in New York, the right of access attaches to all documents concerning court proceedings as soon as they are filed with the court).

There are a great many advantages to the public and the media in granting the same presumption of access to court documents both at the courthouse and on the Internet. Against these advantages, it is hard to see the disadvantages of open access, especially when already existing methods of sealing and redaction are available.